Public Utilities
FORTNIGHTLY

VOL. X; No. 7 SEPTEMBER 29, 1932

"Value of Service" as a Basis of Rate Making

How can it be computed, and who can compute it?

BY HENRY C. SPURR

THE Wisconsin commission, in issuing its temporary order reducing rates of the Wisconsin Telephone Company, has discussed a number of important questions. Of very popular interest is its holding that the economic depression has created an emergency which warranted its action.

THE reduction order was made pending an investigation and a final decision concerning the "reasonableness" of the company's rates. Accompanying the temporary order was a 153-page opinion, a large portion of which is taken up in a consideration of the economic emergency and its effect on rates and rate making. On this phase of the case the commission in substance holds:

1. That if an emergency justifies a temporary increase in utility rates without full investigation (as the courts and commissions have frequently held), it may also justify a decrease in rates for the same reason;

2. That the commission is given specific statutory authority to reduce rates in an emergency which affects the business or interests of the people. The commission says:

> "Section 196.70 empowers the commission to alter rates 'when deemed by it necessary to prevent injury to the business or interests of the people or any public util-

> ity in case of any emergency to be judged of by the commission. . . .' This provision has been on the statute books for many years. It was invoked by the utilities when rapidly rising costs in 1918-20 seriously affected them. But the statute has two purposes; the emergency contemplated by the legislature also includes 'injury to the business or interests of the people.' The commission is given broad authority to determine when such an injury amounts to an emergency." (P.U.R.1932D, at p. 260.)

3. That an "emergency" within the contemplation of the statute exists, and that this emergency injures the "business and interests of the people." The emergency, the commission holds, is caused by the widespread economic depression;

4. That as the rule that utilities are entitled to a fair return is limited by the rule—often stated in court and commission decisions—that in no event can utility rates be more than the value of the service to utility customers, the commission in a rate case has the power to decide what the value of the service is;

5. That the services of the company whose rates are under investigation are not reasonably worth the rates charged—"rates fixed during a period of high prices and a different level of income and based on constantly increasing costs; that the services are not reasonably worth in excess of the rates fixed by the order."

It is not certain whether the commission means "rates fixed" during a different level of company income or of customer income—or both. Judging from its discussion of the question, however, it probably includes customer income. If the commission does mean that, its ruling is of considerable importance, as it would set up a standard of measurement of the "value of the service" by commissions, which has not hitherto been directly advanced.

Unfortunately the decision on questions in which the public will be most interested is not as clear cut as it might have been in a different case. In so far as the decision may be rendered appeal-proof because of its peculiar facts, its authority as a precedent is, of course, lessened.

For example, one of the novel moves made by the commission was to call in a number of nationally known economists, who discussed the current economic depression, as well as previous depressions, and the disparities between various prices that have developed during the current depression. Price movements were translated in terms of the purchasing power of the dollar. Such questions as "balanced prices" and "rigid prices" and the "consequence of adjusting unbalanced prices" were elucidated by the economists. The rigidity of utility prices by the use of weighted average rates and the comparison of earnings of utilities and unregulated industries were developed with the same thoroughness they would be in college lecture rooms or in extension courses in economics. This kind of testimony in rate cases is very unusual.

The contention of the telephone company was that the testimony concerning economic conditions in Wisconsin and the country as a whole, and the opinions of the economists, were irrelevant and immaterial to the issue. The commission denied the company's motion to strike this testimony out without, however, indicating what weight should be attached to it.

JUST what effect was given to this testimony, however, is rendered very uncertain by the commission's opinion accompanying its temporary order, as the commission says:

> "The opinions expressed were helpful in indicating the significance of the factual testimony, as viewed by distinguished and disinterested students of economics. The commission from independent study of the facts might not, indeed does not, in all cases reach the same opinion as that expressed by the economists. We wish it clearly understood that any of the commission's material conclusions from its study of the facts are reached independently of the opinion testimony; these conclusions, in our judgment, are justified by the facts regardless of the opinion testimony." (P.U.R.1932D, at p. 260.)

Thus the materiality of this expert opinion, it would seem, becomes difficult for the purpose of appeal, as the commission reached its opinion independently. Besides it should be noted it did not agree with all to which the experts testified, and the extent of its agreement or disagreement is not specifically stated.

The power of a commission to fix the value of the service to utility customers, and to hold that a utility company can be forced to furnish the service at a return that is less than compensatory—or even at a loss—is an exceedingly important question. This question is raised but it cannot be said to be clearly presented by the commission, in view of its further decision that the rates fixed by it are compensatory.

The commission not only holds that the services are not reasonably worth in excess of the rates fixed by its order, but it states that the order is fortified by findings on the cost of the service.

If the commission's order is fortified against appeal, on the question of cost or compensation to the company, then manifestly its finding as to the value of the service may be ignored; but if the rates fixed by the commission should be found to be noncompensatory, as the company asserts they are, then its holding as to the value of the service would be very important because it would raise two vital questions:

1. Can the commission rather than the utility customer determine the value of the utility service?

2. Can a utility company be forced to serve utility customers at a loss, if a commission determines that the value of the service is not worth what it will cost the utility company to render it?

The commission's decision as a precedent on some of the important questions discussed is also weakened by the emphasis which it places upon the temporary nature of the order, and by the provision it makes for speedy modification. The commission says:

> ". . . to prevent injury to any party to this proceeding, the commission is hereby expressly retaining jurisdiction to mod-

¶ "THE *rule stated generally, in commission opinions, seems to be that no matter how great may be the value of the service, customers should not be charged more than the reasonable cost of the service; on the other hand, no matter what the reasonable cost of the service may be, customers should never be charged more than the service is reasonably worth.*"

> ify the order upon our own motion, or upon petition of the company or any other party, upon the ground that the order is in any respect incorrect, unjust, or unreasonable." (P.U.R.1932D, at p. 282.)

Thus, there is ample evidence that the commission intended, as far as possible, to make the decision withstand appeal—a practice common enough among the commissions and lower courts. This observation is not made in criticism either of the practice or of its motive, which may be entirely proper and commendable.

AGAIN, the emergency relief granted by the commission is based upon a Wisconsin statute. Whether or not the commission has correctly interpreted that statute and whether so interpreted the statute would be constitutional, are questions of importance in Wisconsin alone. They would have no application in states which do not have a similar law. However, some of the questions discussed (but not clearly decided) are of general interest, and sooner or later they may reach the courts for settlement.

Take, for instance, the question of emergency decreases in rates by commissions, pending full inquiry as to their reasonableness, where no provision is made for such action by statute.

If rapidly rising costs, affecting the financial condition of the utilities, create an emergency which warrants temporary increases in rates, does an economic disturbance which affects the financial condition of utility customers warrant a commission order decreasing rates pending a full investigation as to their reasonableness?

Or does mere commission belief that rates are too high at any time authorize such action?

Offhand, it would seem to be another case of what is sauce for the goose is sauce for the gander. But are the situations analogous from an economic, ethical, or legal standpoint?

When an emergency produced by rising costs is advanced as a reason for granting temporary rate increases, the relief is granted primarily not to enable the company to make money but rather to prevent it from being so crippled as to affect its ability to continue to serve its customers. If customers think the rates are too high, they are not forced to take the service. Moreover, the moneys received through increased rates may be impounded for return to the customers should the temporary rates be found, on full investigation, to be too high. Rapidly rising costs might ruin a company before a commission could complete a full investigation as to the reasonableness of the proposed rates. But the commission acts in such an emergency not so much to protect the stockholders as to protect the public from the consequences of an impaired or discontinued service.

THE situation presented by an economic depression which affects the ability of customers to pay would not appear to be the same. If the commission fails to make a temporary reduction, ratepayers are not threatened with ruin because they will not be forced to take the service.

This difference is often overlooked.

When a commission establishes a rate, the company must furnish service at that rate whether it believes it reasonable or not. But the customers

Who Can Decide if Rates Are More than the Value of Service to the Customers?

"WHILE it is easy to say that rates should not be, or cannot be, more than the value of the service (a statement to which everybody would assent), it is difficult to figure out any standard or standards by which a commission or court can determine the value of the service with sufficient accuracy and confidence to warrant the command to a utility company: "Serve at these rates, whether they are compensatory or not."

of the company rest under no corresponding obligation; if they do not like the rate, they cannot be compelled to take the service. Valuable and desirable as telephone service is, for example, it would be absurd to say that individuals might not dispense with it during an economic depression.

Customers, therefore, have double protection against a commission mistake in temporarily increasing rates without a full hearing during a period of rising costs; one is by the impounding of revenues from the increase to be returned to the customers if the increase is found to be unjustified; the other is their privilege of discontinuing the service if they think the charges are too high.

The company, in case of a temporary reduction which afterwards might be found to be unwarranted, would have no such protection. Its losses could not be recouped and it could not decline to continue the service.

So, from neither an economic nor from an ethical standpoint would emergency rate increases and emergency rate decreases seem to be analogous. From a legal standpoint it is hard to see how they could be reconciled. Failure to act promptly by granting increases might result in confiscation of the company's property; but failure to act promptly in granting decreases would never result in confiscation of the customer's property, because the customer is not compelled to take the service. If customers could not decline the service, the legal analogy between emergency rate increases and emergency rate decreases would be perfect, but not otherwise.

BUT a much more important question, which is at least suggested

by the recent Wisconsin decision, is:

Can a utility company's property be confiscated on the ground that the company can be forced to charge no more than the value of its service?

Authority enough can be found for the proposition that a utility company's property cannot be taken from it on the ground of an economic emergency. There is no warrant of authority for an assumption that utility property may be confiscated by rate reductions because of abnormal war conditions or because of an economic depression. But rulings to the effect that a company's property cannot be confiscated because of economic emergency presumably assume that the value of the service is equal to rates which are nonconfiscatory. These decisions, therefore, do not reach the important question suggested by the Wisconsin decision; that question, to state it a little differently, is:

Can a utility's property be confiscated or exhausted by the state during an economic depression or at any other time by forcing the company to continue service at rates which the commission determines are no greater than the value of the service?

LET us consider this "value of the service" problem.

Under our regulatory policy the reasonableness of rates is usually determined by commissions on the basis of the cost of the service, which includes a fair return to utility stockholders. But there is held to be a limitation upon this method of rate making.

Plenty of authority can be found for general statements that rates should not be higher than the value of the service even if producing an inadequate return, or even if the cost of rendering the service exceeds its value. The Supreme Court in an early case declared that if rates are exacted without reference to the fair value of the service, the rights of the public are ignored, as the public cannot be subjected to unreasonable rates in order to pay dividends.[1]

So the Wisconsin commission says:

> "While the tendency in the courts in recent years has been to give primary consideration to cost of operation and return upon value it must not be forgotten that it is still the law that rates, regardless of their effect upon the financial condition of the company, *cannot exceed what the services are reasonably worth.*" (P.U.R.1932D, at p. 263.)

The reports contain many court and commission cases holding that the value of the service is one of the factors which must be taken into consideration in determining the reasonableness of utility rates. That is not interpreted to mean that rates should be charged higher than necessary to cover the reasonable cost of the service, on the theory that such rates would be justified by the high value of the service to utility customers; it is interpreted to mean only that rates, less than sufficient to cover the reasonable cost of the service, may be justified because of low value of the service to the customer.

THE rule stated generally in commission opinions seems to be that no matter how great may be the value of the service, customers should not be charged more than the reasonable cost of the service; on the other hand,

[1] Smyth *v.* Ames (1898) 169 U. S. 466, 42 L. ed. 819.

no matter what the reasonable cost of the service may be, customers should never be charged more than the service is reasonably worth.

Economic laws would take care of the latter contingency anyway, because if a customer did not think the service was worth what the company charged for it, or if he thought he could not afford to pay the charge, he would order the service discontinued. It would be no trouble at all for him to call up a telephone company, for example, and order his phone taken out. The company's alternative, if this condition persisted and it were free to do as it pleased, would be to go out of business and save as much of its assets as it could.

But some of the decisions seem to imply that the value of service may be determined by a regulatory body for the utility customers, and the value of the service having been so determined, the company can be compelled to continue it regardless of the effect on its revenues.

If this is so, it puts a highly speculative matter into the hands of the commissions. It is hard enough to ascertain the present value of a company's property for rate making, but this is child's play compared with the problem of determining the value of the service.

THE value of service must always be a matter of opinion. The value of the service may be different to the individuals who use it. What it is worth to different individuals is usually for the individuals to decide. It depends upon their judgment. While they are in the best position to know, they may or may not be right about it.

Consider, for example, the case of the eccentric business man who never would permit a telephone to be installed in his place of business. In his judgment the service was worth nothing. He would not pay anything for it and, of course, he did not have to; but his judgment about the value of the service would, in the opinion of most persons, be considered bad.

Or consider the case of the telephone subscriber who demanded $1,000 damages for an alleged delay of three days in installing a telephone. This subscriber evidently placed an exceedingly high value on telephone service, but that again, was an individual opinion. Even telephone stockholders not to mention others might regard his estimate of the value

¶ "WHEN *an emergency produced by rising costs is advanced as a reason for granting temporary rate increases, the relief is granted primarily not to enable the company to make money but rather to prevent it from being so crippled as to affect its ability to continue to serve its customers. . . . The situation presented by an economic depression which affects the ability of customers to pay would not appear to be the same. If the commission fails to make a temporary reduction, ratepayers are not threatened with ruin.*"

of the service somewhat exaggerated.

Between these two extremes there is a wide range of opinion as to the value of telephone service.

THE Wisconsin commission appreciates the difficulty of determining the value of the service, for it says:

> "How to measure the value of any service is, of course, a difficult problem and involves intangibles upon which an informed judgment can be had but which cannot be measured by precise accounting methods as financial operations can be measured." (P.U.R.1932D, at p. 260.)

The commission believes that value of service may be measured by a number of factors, which at some points might conflict with the cost of service expressed in terms of sums actually being spent by the company to furnish the service. The commission says:

> "Suppose the telephone company were to continue the steady increase in its costs of operation by increasing the quality of materials used, possibly, to use an extreme illustration, by equipping telephone instruments with silver mountings. The money might well be actually expended in perfect good faith and necessitate, on a cost of service basis, a substantial increase in rates, or in any event make it impossible to reduce rates without thereby reducing the company's income below that of a fair return upon any basis. Yet it is perfectly clear that the commission would be under a duty to prevent such increases or even to reduce those rates because the service of inter-communication would not be reasonably worth what the company has expended to produce it." (P.U.R.1932D, at p. 264.)

But the commission does not suggest any measure of the value of the service to take care of such an extreme situation. It is doubtful if any commission in the country would rest its rate decision in a case like that on such an indefinite and uncertain ground as the "value of the service." Decisions rendered by many commissions indicate that what any commission would do if it found telephone instruments equipped with silver mountings would be to disallow the expenditures for the silver mountings in fixing the rate base, on the ground that they were unnecessary and extravagant. Only property reasonably necessary for the service would be considered. Citations of authority on this topic would unduly extend this article.

THE point is that while utility rates under commission regulation are generally based on cost, this cost does not mean *actual* cost—no matter how extravagant that cost may be—but *reasonable* cost.

If the costs—capital or operating expenditures—are manifestly unreasonable, they are disallowed. It would not be necessary in such a case to speculate about value of the service.

Discussing measures of value of the service further, the commission says:

> "The ratio between the charge made for a utility service and the income of the general public available for such payments is another measure of value of service. If the charge for telephone service at a particular level represents, let us say, 5 per cent of the average family income, then if a drop in the general price level results in a drop of 50 per cent in that average income, in terms of dollars, and telephone rates remain constant, the question might well be raised whether this increase in the ratio of telephone rates to total income did not seriously affect the value of the service. It would seem clear to us that the value of the service is definitely related to the income in dollars generally available for all essential services and commodities." (P.U.R.1932D, at p. 264.)

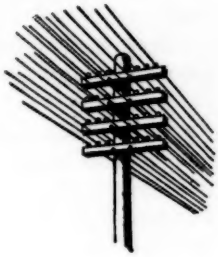
Are there not several weaknesses in this statement? And is not one of these sufficient to show that such a

The Two Vital Questions Raised in Case the Rates Should Be Found to Be Noncompensatory:

"If the rates fixed by the commission should be found to be noncompensatory, then its holding as to the value of the service would be very important because it would raise two vital questions:

"1. Can the commission rather than the utility customer determine the value of the utility service?

"2. Can a utility company be forced to serve utility customers at a loss, if a commission determines that the value of the service is not worth what it will cost the utility company to render it?"



method of appraising value of the service would be untrustworthy?

Even if it were assumed that there were any relation between the value of telephone service and the income in dollars generally available for all essential services and commodities—a rather daring assumption—this would not prove that the value of telephone service was less than the company charged for it, although the percentage of family income absorbed by the telephone company was higher at one period than at another.

One defect in this reasoning appears to be this: It assumes that at the period when telephone service absorbed the smallest percentage of family income, the company received payment for the full value of the service just as if it were permitted to charge all that the traffic would bear. But telephone rates can be no more than the reasonable cost of the service, no matter how high the value of the service may be. It is quite likely, therefore, that there was a substantial margin of value of service above the rates charged when the rates absorbed the smallest percentage of family income. If the cost of other services decreased (and if it is assumed that this lessens the value of telephone service), the margin of value which formerly existed in excess of the rates charged must be absorbed before the point is reached at which the value of telephone service is exactly what the company charges for it. So, even if at one time telephone service absorbed only 5 per cent of the family income, it would not follow that at all times the service is worth no more than 5 per cent of the family income or that it is worth any less than is being charged for it.

This point is mentioned merely in order to show that while it is easy to say that rates should not be, or cannot be, more than the value of the service (a statement to which everybody

would assent), it is difficult to figure out any standard or standards by which a commission or court can determine the value of the service with sufficient accuracy and confidence to warrant the command to a utility company:

"Serve at these rates, whether they are compensatory or not."

THE Wisconsin commission's opinion on the various measures of value of the service which might be adopted is not clear. But the commission does say definitely:

> "Value of service can also be measured, to some degree at least, by the losses or gains in volume of business done and in number of subscribers. This measure must be used with some care because telephone service is a legal monopoly." (P.U.R. 1932D, at p. 265.)

Then referring to losses in the number of subscribers, the commission declares:

> "This indicates, in a concrete way, that the rates were in excess of the value of the service to these subscribers who discontinued their service or were disconnected." (P.U.R.1932D, at p. 265.)

This discontinuance of service may indeed show that a subscriber thinks the service is not worth what the company charges for it. On the other hand, it may merely indicate that a subscriber, because of straightened circumstances, thinks he cannot afford to have the service no matter what he believes it may be worth. It must be remembered, however, that the subscriber who discontinues service because he thinks it is not worth what is charged for it may be wrong. It is quite possible that the service would be worth to him much more than he would have to pay for it.

The effect on the company's business, it is true, would be the same under the operation of economic laws whatever the subscriber's motive or belief and irrespective of whether he were right or wrong in his judgment as to the value of the service.

But the interesting legal question is whether the commissions, assuming they have power to do so, may measure the value of service by considering, among other things, the ability of utility customers to pay for it and, having fixed the value by this method, compel the company to continue service regardless of the effect which this may have on its revenues.

Perhaps this commission measure of the value of the service is not approved by the Wisconsin commission but it is at least suggested.

HOW far a customer's ability to pay for service should affect the problem of rate making has come up in a number of cases, but no attempt seems to have been directly made to tie it to value of the service for the purpose of applying the value of the service rule; and the decisions on the question of the effect of ability to pay on rate making are not in harmony.

While a number of commissions have held that ability to pay may be considered, it has been said, on the other hand, that a commission is not at liberty to reduce rates in response to unfortunate economic conditions which render patrons less able to pay while operating expenses are not depressed.[2]

This question was discussed some time ago by the Interstate Commerce Commission, which held that rail-

[2] Butte *v.* Butte Electric R. Co. (Mont.) P.U.R.1921C, 857.

roads cannot be compelled to lower rates to relieve the needs of industry. The commission said:

> "It has been suggested . . . that the carriers as public servants should bear part of the public burdens; and that we may find unjust and unreasonable a rate structure which is not relaxed to relieve the needs of an industry. Put in another way, the proposition is advanced that we may find existing rates unjust and unreasonable, and require that they be reduced below what would be justified by standards heretofore recognized, because an industry is not prospering. If that be true, then the converse must be true, that at times when the industry prospers we may find justified rates higher than those which under accepted standards would be just and reasonable. If true of this industry, it must be true of other industries that languish or flourish, now and hereafter; and if true of industries, why not true of localities or individuals? The answer is that the foundations of what is just and reasonable are not set on such shifting sands."[3]

The commission cited in support of its rule a Supreme Court case which held that:

> "The right of a railroad to charge a certain sum for freight does not depend at all upon the fact of whether its customers are making or losing by their business."[4]

WHATEVER may be said in favor of the rule that utilities are entitled to a reasonable compensation for their service, provided the rates charged do not exceed the value of the service to the customers, it would seem to be a doubtful jump to the conclusion that value of the service for the purpose of applying the rule can be measured by the ability of the customer to pay for it, which would, of course, be affected by an economic depression.

If value of the service can be determined in that way and if the utilities can be forced to serve at a compensation which cannot exceed the value of the service, then the demand of the Communists for free utility service to the unemployed would appear to be sound; for the value of the service to the unemployed, measured by that standard (ability to pay) would be nothing.

Rates, under the operation of economic laws, cannot long continue to be more than the value of the service, whether that service is monopolistic or not. No industry can continue to charge more than what the public deems to be the value of the commodity or service. Such a policy would lead to decline rather than growth. The enormous expansion of certain utility industries is convincing evidence that, in the judgment of the public, the service is worth at least what is charged for it and probably much in excess of its established rates.

But a commission or a court might not think so. If a court or a commission may substitute its judgment as to the value of the service for that of the company's customers, determine that the value of the service is less than its reasonable cost, and compel a company to render that service at a loss, it must be confessed that we have a very surprising legal situation which it would be hard to justify on any ground, and particularly on ethical grounds.

A discussion of what might result from the enforcement of such a law, assuming that it exists, is beyond the scope of this article.

[3] National Live Stock Shippers' League *v.* Atchison, T. & S. F. R. Co. (1921) 63 Inters. Com. Rep. 107.

[4] Union P. R. Co. *v.* Goodridge (1893) 149 U. S. 680, 37 L. ed. 896.

If Power Cost Nothing to Produce—

What Would Be the Cost to the User?

As a matter of fact, the rates for electricity would not be materially lower than they are now, even though power were given away free at its source. The problem of costs, therefore, is mostly a problem in distribution—specifically in the ways and means of delivering power into the home. And here it is that the contest wages between the distribution methods employed by the privately owned companies under commission regulation and the municipally owned companies. In the following article the author weighs the merits—and disadvantages—of each.

By JOHN BAUER

SUPPOSE that electricity cost nothing to produce. Could it be delivered free to consumers?

Not if it depended upon present methods of distribution to reach the factories, stores, and homes. The situation would be exactly as with water, which, costs nothing in itself, but to bring it where it is used costs a great deal. The consumer, therefore, must pay for water, though it is "God's free gift" to start with.

ELECTRICITY, however, starts with production costs. In the case of steam power, the fact is manifest to everybody; there must be a generating plant, which requires large investment, upkeep, and operation, and which consumes coal and other materials for the production of current. In the case of hydroelectric plants, the fact that there are production costs is less obvious, for the process starts with falling water which seems to cost nothing. But, unfortunately, before this falling water can be converted into electric power, an investment in dams, reservoirs, and a power house is necessary, so that interest, depreciation, maintenance, and operation usually bring the marketable power up to a half mill per kilowatt hour. There are many water-power sites which, so far as power alone is concerned, cannot be economically developed, because steam power is cheaper.

A modern steam plant is able to

turn out electricity at a net cost of seven to ten mills per kilowatt hour, including interest, maintenance, depreciation, and operation. Even where power is not locally generated, but is transmitted from a central station, the costs of generation and transmission up to distribution in a community should not exceed 1.5 cents a kilowatt hour. If it is greater, the processes are probably uneconomical and cheaper local production would be available. This figure may be taken as the maximum that production should normally come to.[1] Under present conditions, therefore, the rates paid by commercial, and particularly by domestic users, could not be reduced greatly even if all production costs were eliminated—at least, not so far as that factor alone is concerned.

LET us look briefly at the distribution costs that are inevitably incurred, but disregard taxes paid for various governmental purposes.

There is, first of all, the extensive distribution investment. This includes substations which adjust the character of the electricity for local send-out; distribution lines, either underground or overhead, which carry the electricity along the streets; transformers which reduce the voltage for residential use; service lines to carry the electricity to the consumers' premises, and meters to measure the amount of consumption by the customers.

The extent of this investment is inevitably large. It is affected greatly by local conditions, especially by public requirements, for example, whether overhead lines are permitted, or whether underground conduits must be provided.

The cost to be paid by consumers thus includes, first of all, fixed charges on the investment; depreciation and interest (or return on the property). They usually come to about ten per cent on the investment, and must be paid if operation is to be self-sustaining.

In addition, there are also various operating expenses, which include ordinary maintenance and all necessary labor and materials required in the distribution process. This includes, particularly, the expenses incurred in taking care of the customers. Meters must be read once a month; customers' records and accounts must be kept; there is billing and collecting to do. These expenses alone usually range from $3 to $6 a year per customer. There are also the general and miscellaneous expenses, which come under the class of overhead and include general officers' salaries, law expenses, insurance, and similar items.

When all the costs properly incurred in connection with distribution are counted up, they come to an aggregate that will be astounding to those who are not aware of the ramification of facilities and processes. What they will amount to on the average per kilowatt hour delivered, depends, first, upon the amount or level of costs and the economy that has been exercised; second upon the extent that electricity is used by the consumers, and third upon the type of rate schedule that is provided. These

[1] For convenience, we shall use production cost whether the power is locally generated or is transmitted to the distribution system from a central station which serves two or more communities.

three factors will be briefly considered, particularly from the standpoint of the residential users.

So far as the level of costs is concerned, there can be tremendous differences. There are, unfortunately, no definite standards which can be readily applied to determine what are proper amounts.

There is no clear measure of efficiency, and the total costs are not kept with sufficient definiteness so that convenient and reliable comparisons can be made between companies, communities, or classes of consumers.

As to reliability of costs, we may distinguish between operating expenses and fixed charges.

For operating expenses, the classification of account does provide for the showing of actual costs, and comparisons for the several processes can be made between different companies. The expenses, however, are usually bulked together without regard to classes of consumers or territories. It is possible, therefore, merely to make comparisons by individual accounts between companies, but not to present analyzed costs for rate making as applied to different classes of consumers particularly to residential users served under different conditions.

If the accounting is unsatisfactory, so far as operating expenses are concerned, the situation is all but chaotic, at least so far as the costs connected with investment are affected. The difficulty is three-fold:

First, the actual costs for the various classes of property are inadequately grouped by functions, territories, and classes of consumers.

Second, the costs themselves are seldom reliable as representing reasonable and necessary investment in the properties.

Third, even where the actual costs are properly shown, unfortunately the legal basis of rate making has not been cost, but rather fair value of the properties.

To fix rates does not require primarily an analysis of investment to determine the interest and depreciation to be paid by the consumers, but a valuation of the physical properties used and useful. Under the law of the land, the basis of such valuation has been established principally at reproduction cost, less depreciation, which may be much more or less than actual investment. The rates are based on the theoretical return and depreciation computed on the valuation.

Because of the valuation process, which ignores scientific accounting, the aggregate distribution costs

¶ "So *far as technical labor and ordinary processes are concerned, the private companies have been more efficient than the municipal plants. This economy, however, has been counterbalanced by the greater overheads represented by general and miscellaneous expenses, new business expenses, also commercial, and particularly by the greater returns required or realized from the properties.*"

are uncertain and uncontrolled. The amount to be allowed for rate making can be determined only after laborious procedure, and then the results do not reflect cost, but estimates which verge upon guesses.

Because of the conditions thus briefly recounted, there is little definite knowledge about the net distribution costs. It is not surprising that there is a widespread feeling that under present conditions the actual costs are much less than the revenues collected from the consumers. For the most part, however, the critics do not have the facts to support definitely their charges, and the companies do not have, and make little effort to present clearly, the facts so as to allay the criticism if unjustified.

What is needed above everything else, in the interest of both consumers and investors, is a system of rate making that rests definitely upon costs which, in turn, will be shown throughout by a system of much more scientific accounting than we have at the present time.

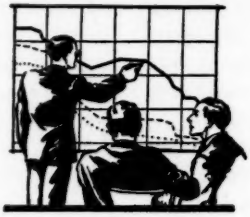
Until we have abandoned the fair value procedure, and until we have reconstructed the accounts of the companies upon a functional and class-cost basis, we shall know little about the actual distribution costs in relation to the rates charged to the consumers, especially the residential groups.

THERE is, too, a widespread feeling that the net distribution costs of most private companies are excessive; at least that the charges to the domestic consumers are too high compared with reasonably necessary costs under efficient managements. Whether this criticism is warranted or not, nobody really knows, because the facts are not shown, and the companies have made little serious effort to make them available.

There is, furthermore, the view that the actual costs incurred for distribution by the municipal systems are on a lower level than by the private companies. There is considerable information to indicate that this view is well founded, but again, there has never been an adequate survey made of distribution costs to warrant any final conclusion.

From my own studies, which admittedly are sketchy, I have come tentatively to the conclusion that so far as technical labor and ordinary processes are concerned, the private companies have been more efficient than the municipal plants. This economy, however, has been counterbalanced by the greater overheads represented by general and miscellaneous expenses, new business expenses, also commercial, and particularly by the greater returns required or realized from the properties. The municipal plants, I believe, will show on the average lower net distribution costs, because of economy in overheads and in fixed charges on investment.

I HAVE before me the figures of one of the largest electric systems in the country, covering a 15-year period. So far as basic operating expenses are concerned, direct labor and technical supervision, there has been progressive economy, steadily realized over the years. I am convinced that private management, so far as these costs are concerned, has been less costly than would have been achieved under public ownership and operation.



"THE success of private ownership and operation will be severely tested in the immediate years to come by the attitude of the companies toward residential consumers. It is in the residential group where particularly high or excessive rates have prevailed. It is here where discontent and criticism chiefly are found. The job is to . . . reduce rates, cut costs, strip off unnecessaries, develop the business; then to reduce rates again."

But when I examine the growth of general and miscellaneous expenses, also new business and commercial expenses, I feel certain that the basic economies in labor and materials have been smothered by overhead. When I consider, further, the advances in returns realized, I cannot avoid the conclusion that the public is paying considerably more than is warranted.

I may be wrong in my judgment. Unfortunately, the costs are not separable and determinable in a satisfactory manner. Under present conditions, nobody can make a satisfactory comparison of costs between different companies, communities, classes of consumers, or between private and public plants. But I feel that there is justification to the view that the municipal plants have been doing a more economical distribution job than the private companies. The latter have not been held to rigid economy either by the commissions or by the working of economic law. Under the conditions of distribution monopoly, they have allowed the overheads to creep up during the long period of prosperity, and have not passed sufficiently to the consumers the advantages of technological improvements and constantly expanding volume of business.

THE effect of distribution costs upon rates depends not only upon the aggregate burdens imposed upon the public for the distribution process, but also upon the extent of consumption. This is a point that is not understood by consumers, and is seldom adequately realized by the company management; or, at least, it is not adequately acted upon from the standpoint of desirable long-run policy.

It happens that the economically necessary distribution costs are practically fixed and constant in amount. When a distribution system has once been laid down, the total costs vary

but slightly with the quantity of electricity actually used by the consumers. This applies particularly to the household users, and includes practically all the costs, interest on investment, depreciation, maintenance, and operation. There is little difference, for example, whether the customers use 30 kilowatt hours a month (which is a common average in our industrial centers) or whether they use 100 kilowatt hours, or, indeed, reach 250 which has been attained in some of the Ontario municipalities.

The chief present difficulty in the residential business is the low average consumption. Where this is only 30 kilowatt hours a month, the total net cost per kilowatt hour delivered is bound to be high, and is naturally reflected in the rates. If the average could be doubled, it would still reflect light utilization, but the cost per kilowatt hour would be practically cut in two. If consumption were doubled again, the cost would be halved once more. The cost per kilowatt hour diminishes almost in proportion with increase in average consumption.

THE urgent problem of the companies is to bring about much greater utilization by domestic consumers. It is ridiculous that the expensive distribution facilities and processes should not be utilized more than thirty kilowatt hours a month per customer. A proper system of rates, coupled with really promotional effort, should in a period of ten years raise the average five times. This is the process by which the distribution costs can be greatly reduced per kilowatt hour, and the economies would be reflected in the rates charged to the consumers.

What can be achieved has been shown strikingly by the municipal systems in Ontario. They have had to rely to a large extent on the domestic business because they did not have the industrial loads available as in the United States. Their residential consumption is almost unbelievable here. It ranges for the twenty-three cities of over 10,000 population, from slightly under 100 kilowatt hours a month to over 350. This is due chiefly to the rates and to the efforts of the municipal managements. They are concerned first with keeping down all costs to an economic minimum, and second, with building up consumption to a maximum.

The Ontario distribution costs as to amounts are amazingly low compared with our private companies. They are, moreover, definitely determined and set forth in publicly printed reports. In addition, the accounts make systematic separation between domestic and commercial business. Each class of rates is fixed so as to cover its own costs as regularly determined. There is nothing analogous among our companies.

For the year 1929 I made a comparison of all Ontario municipalities of 10,000 population and over, with the New York companies reporting to the public service commission. Taking just operating expenses, which for Ontario were exact figures, but for New York required prorating of general and miscellaneous, I found an average of 3 mills per kilowatt hour in Ontario, compared with 11.5 mills for all New York companies except those engaged predominantly

in industrial electrical power business.

Including for Ontario also depreciation, interest, and amortization as actually provided on a systematic basis, the net distribution cost per kilowatt hour was only six mills. Unfortunately no comparable figure for New York is attainable. But the Ontario total is only about half of the New York operating expenses.

THE low results are due not only to basic economy as to costs, but to large residential load development. Like results can be obtained by our companies, if appropriate efforts are made. It is here, I believe, the companies have failed badly. The managements have been power-minded, and have regarded the residential use largely as incidental, not really a material factor in the business.

This attitude must be changed and there are indications that a shift is taking place, even if not rapidly.

The economic depression will probably stimulate interest in the residential load, inasmuch as this part has continued to develop, notwithstanding hard times, while the power load has declined with the general collapse of industry. The stability of the domestic business has been a life saver for the companies.

The city of Seattle furnishes an admirable illustration of what can be done by promotional effort. The municipal plant has depended heavily upon domestic consumption, because the competing private company had been entrenched in the power business. It began, therefore, many years ago to fix residential rates upon a promotional basis and through vigorous sales policies to stimulate increased consumption. In 1923, the average consumption per residential user was only 30 kilowatt hours per month; at the present time, it comes close to 100 kilowatt hours.

This reflects promotional efforts, and indicates what can be done anywhere, through like activity.

THE type of rate is extremely important in a program of domestic load development. Until a few years ago, the prevailing schedule was the straight-line rate per kilowatt hour, without regard to quantity of consumption or conditions under which the electricity was supplied, or the effect upon the development of consumption. In recent years, the service charge or initial charge form of rates has come extensively into use. Under this type, the consumer is compelled to pay a fixed sum a month (usually a dollar), and he may be permitted to use a few kilowatt hours of electricity. The so-called follow-up rate is then usually placed at 7 to 10 cents per

¶ "I AM *convinced that private management, so far as basic operating costs are concerned, has been less costly than would have been achieved under public ownership and operation. But when I examine the growth of general and miscellaneous expenses, also new business and commercial expenses, I feel certain that the basic economies in labor and materials have been smothered by overhead.*"

kilowatt hour for a block of 40 or 50 kilowatt hours per month; then there is a reduction to 5 or 6 cents per kilowatt hour for the next block, and then finally 3 or 4 cents for all additional use. There are, of course, many variations; these figures are given only for illustration.

The expressed object has been to stimulate greater consumption, and has been decidedly in the right direction. But the difficulty is that the schedules have usually sought to achieve two rather inconsistent results: to reduce rates for promotion of future consumption, but not to sacrifice any immediate revenues. Hence, while substantial reductions have often been made for the higher consumption blocks, the loss of immediate revenues within those blocks has been reprieved by the initial charge and the increase in bills to small users. The promotional effect of the reductions, has thus been largely neutralized by the demotional influence of the higher charges to most of the consumers.

Under these newer schedules, the average rate per kilowatt hour for the ordinary residential consumer comes usually from 8 to 10 cents per kilowatt hour, and often higher. This represents normally an increase and not a decrease in the monthly bill. For the small user, the increase is more marked. Taking one cent as the cost of generation, the net charge for distribution thus reaches 7 to 9 cents per kilowatt hour for the ordinary user, and looks excessive.

THE initial charges are mostly so high that they are rather prohibitive to promotion of greater consumption for the ordinary user. The promotional force is affected by the amount of the initial charge as well as by the follow-up rates. If the bill for 30 kilowatt hours a month reaches $2.50 or $3, the ordinary person can expand his use only with difficulty.

Even if the further rates are attractive, he has exhausted what he can pay, and cannot reach the lower rate blocks. The initial bill, as well as the successive increments, is an essential part of a really promotional schedule.

There are few domestic schedules that are really promotional for large consumption of electricity. To lead to extensive introduction of electric equipment, requires, first, a reasonable initial rate which would apply monthly to lighting, and should not exceed 6 cents per kilowatt hour up to 40 kilowatt hours a month. Next, to bring about the installation of the major conveniences and to reach 100 kilowatt hours a month, calls for a rate not over 4 cents. To go materially beyond 100 kilowatt hours requires the installation of an electric range, which immediately adds about 150 kilowatt hours a month, and produces a large consumer. But to justify the installation necessitates not only such moderate prior charges as indicated, but an effective rate of not over 2 cents per kilowatt hour for the added cooking use.

But there are few such schedules to be found among the companies. In most of our cities, especially in small apartments, the ordinary or small user could easily be converted into a large one by a proper rate schedule, and energetic sales policy.

Among the companies which have

The Growth of Domestic Power as Shown in the Records of One Company:

	1921	1931
Consumption: kilowatt hours	8,361,000	38,668,500
Revenue	$808,915	$1,905,555
Average number of customers	29,844	56,719
Monthly consumption per customer: kilowatt hours	23	57
Average revenue per kilowatt hour	9.67 cents	4.93 cents
Average monthly bill	$2.26	$2.80

made distinct progress, is the Hartford Electric Light Company. Its president, Mr. Samuel Ferguson, has done much more than talk of promotional rates; he has introduced rates which have really promoted. The comparison of domestic business, as shown above, is significant.

I should hardly accept Mr. Ferguson's rates as ideal, but he has emphatically pointed the way and has made an excellent start toward low domestic rates through high consumption. He has increased the per capita consumption about 150 per cent in the period, and what is striking, has increased it 30 per cent during the past two years,—the period when decreases might have been expected.

THE problem for the companies is to study rigorously the distribution costs, and to strip them down to an economic minimum. To institute immediately domestic rate schedules similar to those in Ontario and in some of our municipal plants, is, of course, out of the question. The existing costs are too high, and the average consumption is much too low. If, however, the distribution costs are deflated rigorously, then a first step can be made toward promotional rates.

Such a schedule should be available now for most of the companies. If it were introduced and coupled with vigorous sales effort, it would probably produce a doubling of average use within five years. With this development, there would be a further margin of earnings which would make attainable a further readjustment of rates for additional promotion. With three or four such cycles of rate adjustments and promotion, the companies could bring about domestic schedules and consumption that would compare favorably with Ontario. This result, however, cannot be brought about in one fell swoop. It requires time and effort. It necessitates clear appreciation of the domestic business.

THE success of private ownership and operation will be severely tested in the immediate years to come by the attitude of the companies toward residential consumers. It is in the residential group where particularly high or excessive rates have prevailed. It is here where discontent and criticism chiefly are found. The job is to get down to brass tacks, reduce rates, cut costs, strip off unnecessaries, develop the business; then to reduce rates again, develop the business further, and through systematic policy, finally bring about rates and business that require no apologies and belabored explanations.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

H. I. PHILLIPS
Humorist.

"What America needs today is not fewer railroads, but fewer notes in the back of the railroad time-tables."

F. A. NEWTON
Utility rate expert.

"The public is not going to tolerate a new theory of society which includes government ownership and political operation."

L. J. HACKNEY
Railroad attorney.

"A reduction in the labor costs of railroad maintenance and operation is most essential to the continued life of the railroads."

WILLIAM GREEN
President, American Federation of Labor.

"The entire policy of the American Federation of Labor has been against the reduction of wages during the depression, and the Federation takes its stand now against a cut in the pay of railroad employees."

PAUL CLAPP
Vice president, Columbia Gas and Electric Company.

"I advocate indicating on our gas and electric bills the percentage of the bill which is collected from the customer in turn to be paid over in taxes. The value of this is that it will help make every citizen tax conscious."

FRANK J. SPRAGUE
Electrical engineer and inventor.

"If some of the hundreds of millions of capital which the national government is ready to dole out for unproductive public works were diverted to legitimate and sane electric railway equipment, a long step would be taken toward economic recovery."

JAMES M. BECK
U. S. Congressman from Pennsylvania.

"Or what is stranger than the belief that if the president selects eleven men from the body of the people, not one of whom has had any practical experience in operating a railroad, that forthwith, by the magic of a parchment—called a commission—they become endowed with an ability, to which even the most experienced railroad official would not pretend, of supervising and controlling the intricate affairs—mechanical and financial—of all the railroads of the United States?"

A Year of Street Railway Regulation

PART I

The current trends as revealed in commission and court orders and decisions

BY ELLSWORTH NICHOLS

"HAVING succeeded in reducing the United Railways to the estate and dignity of a bonus marcher, the town altruists and men of vision now turn their attention to the Consolidated Gas Company."

With these words Henry L. Mencken starts an article on the subject, "The Prudence of Demagogy." He informs us that the assault upon the United of Baltimore made at least one Congressman and intimates that political preferment is found at the end of the road for those who attack public utilities. The writer speculates on the result if the railway is forced into a receivership and "poor John Smith, taxpayer," will have to fork up $600,000 or more a year to take the place of the missing park tax. If this taxpayer owns any of the railway's bonds himself, he will stand another loss.

The Baltimore situation has unique characteristics, but it typifies basic factors in our treatment of street railways. The Baltimore Company for years has paid 9 per cent of its revenues for the support of city parks. In recent years strenuous efforts have been made to obtain relief from this tax, which is, of course, included in the expenses passed on to street car riders. Some city officials are now trying to mitigate this burden in order to preserve the railway service and reduce fares.

THE state commissions, in regulating the electric railways, like these city officers, are doing what

they can to preserve rail transportation at a reasonable cost to the public, in the face of assaults on the systems by those who, for the sake of political advantage, are willing to push them to the wall and rely on their competitors—the motor carriers.

The Wisconsin commission has taken the view that it should be a critic of a utility's management, seeking every opportunity to encourage and commend alertness, public spirit, and resourcefulness, as well as to condemn and, if necessary, penalize management which is incompetent, unmindful of, or unresponsible to, the public's interest. The commission, however, declined to accept any responsibility for the solution of a distinctly managerial problem on the ground that it is only where there is a public interest to be conserved, protected, or promoted that it will have any concern with such matters.

The commission in making these announcements authorized a street railway company to adopt various fare experiments for the purpose of increasing its revenue, particularly by stimulating off-peak patronage. There were included such devices as a Christmas shoppers' pass, a children's free pass, shoppers' hourly pass transfers, summer night pleasure passes, and the free carriage of customers of particular commercial concerns paying therefor. The commission declared that none of these resulted in an illegal discrimination against the regular rush-hour passenger.[1]

A STREET railway company in Indiana was permitted to establish for an experimental period a central zone fare of 5 cents cash for each passenger riding into or away from the central zone on any line, except for those passengers who boarded a street car or bus before entering the central zone, and who desired to ride beyond the central zone either by use of transfer or upon the same car which might travel on a route passing through the central zone. The former fare was 7 cents cash or a token sold on the basis of four tokens for 25 cents, with the issuance of transfers from one street car to another for a continuous trip. The bus fare was 10 cents cash with free transfer from bus to street car line. A charge of 3 cents was made for a transfer from street car line to busses. Under the proposed fares the 7-cent cash fare on the street cars, or 10-cent cash fare upon busses, was still to remain in effect for persons not coming within the 5-cent provision.[2]

A STREET railway company in Nebraska, struggling against adverse economic conditions to preserve its service, was permitted to discontinue zone rates. They had failed to increase the company's operating revenues. Reduced rates were authorized in an effort to stimulate patronage. The commission found that the discontinuance of zone fares would not disturb the fares of at least 72 per cent of the riders, and would decrease the fares of approximately 19 per cent of the patrons. The company was permitted to inaugurate a 10-cent fare except for school children and children between the ages of five and

[1] *Re* Milwaukee Electric R. & Light Co. (Wis.) P.U.R.1931E, 289.

[2] *Re* Northern Indiana R. Co. (Ind.) P.U.R.1932C, 521.

twelve years, who were permitted to ride at reduced rates. Five-cent zone fares had formerly been in effect. The results of operation showed that this fare had failed to stimulate to any perceptible extent travel and traffic in the 5-cent fare zone. Approximately 19 per cent of the car riders under the zone fares had been paying 12 cents, and under the new fares they would be able to ride for 10 cents.[3]

THE unusual objection was raised in a proceeding before the Missouri commission that if a street railway company were relieved of payment of interest upon its bonded indebtedness, lower fares would be sufficient to pay a fair return upon the value of the utility's property. The proponent of this idea contended that the indebtedness was not a proper charge because it had been incurred in the reorganization of the company and did not represent money borrowed for proper corporate purposes. The commission approved an application for a revision of fares and refused to adopt the lower fares suggested, notwithstanding this contention.[4]

THE reasonableness of street railway fares should be measured by their effect upon the entire system without regard to whether a particular branch is operated at a loss, according to an announcement by the Wisconsin Supreme Court, in a case where an order of the railroad commission fixing fares was set aside. The court held that street railway fares which failed to produce a reasonably adequate return on the property involved, and which compelled the owner to use earnings from public utility operations to meet operating deficits could not be sustained.

In this same case the court sustained the action of the commission in enlarging a single fare zone area regardless of municipal boundaries. Proponents of the idea that a community of interest justified a uniform fare for down-town and outlying portions of the city regardless of a difference in cost contended that such community of interest and the consequent sociological factor ended at the city limits. The commission concluded otherwise, and the court agreed. It was said that from the viewpoint of transportation there were no city limits of Milwaukee. The only recognizable limits were those of the system's operation.[5]

IN the Buffalo street car fare case, where the International Railway Company has been contesting fares established by the public service commission, will be found some rulings governing companies which go into

[3] *Re* Lincoln Traction Co. (Neb. 1931) P.U.R.1932A, 366.

[4] *Re* Kansas City Pub. Service Co. (Mo.) P.U.R.1932B, 383.

[5] Milwaukee *v.* Railroad Commission (Wis. Sup. Ct.) P.U.R.1932B, 339.

¶ "THE *cost of membership in civic associations was included as a proper operating expense where the railway was complying with a commission ruling that only one membership should be retained in each such association.*"

Federal courts. A motion for preliminary injunction was denied and the matter was referred to a special master.

The court considered that perennial question of exhaustion of remedies, and ruled that the company might maintain a suit in a Federal court on a claim of confiscation without resorting to certiorari proceedings in a state court, and also without petitioning for a rehearing before the commission. It was also decided that a company which accepts rates fixed by a commission with the express stipulation that it believes such rates to be confiscatory and reserves the right to initiate proceedings to prove the insufficiency of the rate is not barred by such acceptance from suing later in a Federal court to enjoin their enforcement.

It is a common practice for companies contesting the validity of commission rates to file a bond in a Federal court and obtain a restraining order which permits the charging of the higher fares pending a final decision. In the International Railway Company Case the court refused to allow this. It held that preliminary injunctive relief against commission orders should be granted only when it is clearly demonstrated that the rates in effect are confiscatory of the utility's property. It was said to be impracticable to grant a restraining order and allow the company to file a bond. The court was of the opinion that this would not fully protect the rights of the public in event an increase in street railway fares should be found erroneous. Under this ruling it would seem that a strong *prima facie* case must be made in order to obtain the temporary restraining order.[6]

THE rapid transit companies in New York city for many years have been operating under a 5-cent fare. All attempts to increase this fare have met vigorous opposition. The companies some time ago attempted to attain a 7-cent fare through proceedings in the Federal courts, but after reaching the United States Supreme Court they were sent back to the state tribunal.

The operations under the 5-cent fare are in pursuance of certain contracts. These are peculiar in that they are not merely contracts with a municipality, which in several cases have been held subject to change by the commission, but they are contracts made under direct legislative authority. The rapid transit companies contended that even so the commission had authority to change the contract fares, and begging its case on this contention principally it went to the highest court of the state.

The court of appeals held, however, that the contracts executed prior to the enactment of the Public Service Commissions Law, were still in force, and that the general authority granted to the commission to fix a reasonable rate for public utility service did not give the commission authority to change these contract rates; nor was the commission authority extended by reason of the fact that subsequent to the Public Service Commissions Law certain new contracts or alterations of the original contract were agreed upon.[7]

[6] International R. Co. *v.* Prendergast (1930) 52 F. (2d) 293, P.U.R.1932A, 161.

[7] New York *v.* Interborough Rapid Transit Co. 257 N. Y. 20, P.U.R.1931E, 278.

The Legal Status of the One-Man Operated Car

"In Georgia an ordinance had been adopted prohibiting the operating of one-man cars; a preliminary injunction against the ordinance was granted with the statement that a reasonable doubt had been cast on the validity of the ordinance under the city's police power. The court remarked that an ordinance requiring the services of two men for street car operation could not be upheld merely because it had the effect of increasing employment."

Last year interest was manifested in the decision by Commissioner Thomas, the Oregon one-man commission, relating to street railway fares in Portland. He ordered a reduction from 10 cents to 7 cents. His order has recently been enjoined by a Federal court on the ground that the lower fares were confiscatory. Some of the points involved in the commissioner's decision are worthy of notice because the same points have been involved in several other recent decisions on utility rates. He ruled, for example, that the commission is under no obligation to fix street railway fares which are in excess of the value of the service and are as high as could be realized by an improved and modern system, for service of an antiquated and obsolete system operated by a company that refuses to make necessary expenditures for the improvement of its service, especially when the expiration of its franchise is approaching.

This question of service value is playing a leading part in the attempt to force lower rates of utility companies during the period of economic depression. The contention is made by the companies that the economic limit, or value-of-service, is a matter for consideration by the management and is an economic limitation rather than a legal limitation upon the rate. The opposite view is that, under the general statement by various authorities that the value of service and the cost of service are the chief criterions for measuring the reasonableness of a rate, and that the value of service can never be exceeded; rates which exceed the value of the service cannot be allowed even though these rates do not meet the cost of service, including a fair return on the property value.

In this case it was ruled by the commissioner that when a utility has reached the point where any reasonable rates fixed would necessarily produce less than an amount which would be regarded as a fair return upon the investment, it is not necessary for the commission to make a formal determination as to the actual present value of the plant.[8]

[8] *Re* Portland Electric Power Co. (Or.) P.U.R.1931E, 207. Injunction against order granted in Pacific Northwest Public Service Co. v. Thomas, July 25, 1932.

THERE have not been many recent rate proceedings involving street railways in which all the characteristic features of a rate case are involved. This is true because at present the street railways are usually operating under rates which would not produce a fair return upon any value which might reasonably be found. This was true in the Gary Railways Company Case, where the commission declared that the lowest justifiable estimate of value was more than sufficient to sustain the application for increased fares. The commission, therefore, said that it was unnecessary to analyze all the evidence of value in the record or to determine the exact present value of the property. The evidence indicated that the present fair value could not be less than the cost of reproduction depreciated. Therefore, reproduction cost was used as a rate base.

The commission discussed the question of depreciating going concern value, and ruled that the allowance for going concern value is not subject to depreciation in view of the fact that going value increases rather than depreciates as services continue, so long as the property is efficiently managed and properly maintained.

The value of leased property which was actually used in utility service was included in the rate base, but the rentals paid by the company for the leased property were excluded from the operating expenses.

The Indiana commission, like the Wisconsin commission, concluded that a street railway system serving a logical metropolitan district including more than one municipal corporation should not be compelled in seeking a rate increase for its entire system to apportion the value of its property or cost of its service, or determine its rates as for a particular city within the metropolitan area.[9]

AN unusual feature of an Ohio case was the attack by a taxpayer upon the proceedings under which a street railway fare was fixed by what was called a "board of arbitration." At the outset the court ruled that a taxpayer has the right to bring a suit to test the legality of such a fare. The substance of the controversy, however, was the claim that the determination of proper rates of fare is a legislative function which rests solely with the legislative authority of the city, and that it cannot be delegated to arbitration. The court recognized the principle that arbitration, strictly speaking, has to do with the settlement of existing controversies between parties, and that if submission to the so-called board of arbitrators under the contracts between the city and the street railway company were strictly an arbitration, it would be unauthorized.

The court took the position, however, that this was not strictly an arbitration, but that the board were appraisers of value, or, in other words, that the function of the members of the board was to determine the reasonable value of the service rather than to settle a dispute under the contract. The court rejected the claim that the municipal authorities had no power to submit this question with the statement that rulings on delegation of municipal authority did not

[9] *Re* Gary Railways Co. (Ind.) P.U.R. 1931D, 455.

apply to cases where the rates were properly a matter of agreement as distinguished from those cases where they may be fixed by legislative authority without the agreement or consent of the utility.[10]

THE commissions as well as state legislatures, bankers, and investors are giving increasing attention to the question of intercompany relationships, financial organizations, and security issues. The New York commission is one of those which has spent considerable effort and time on the question. In one case it considered the issuance of class B stock by a corporation which resulted from a reorganization by purchasing bondholders. It was proposed to use this stock to pay for management services in advance of their rendition, although the stock would be technically issued to the bondholders. This issue was disapproved, but the corporation was authorized to issue to bondholders class A stock in the ratio of 10 shares for each $1,000 bond as part of the reorganization plan, since the ratio of ownership previously evidenced by bondholders would not be disturbed, and it was impracticable to determine at the time of the inquiry with reasonable accuracy the present value of assets represented.[11]

The New York State Railways some time ago were acquired by certain interests without the consent of the commission. The commission has recently decided that such acquisition of control violated a statute forbidding the sale of more than 10 per cent of the total outstanding stock of a utility to a domestic stock corporation. The commission entered no order since the street railway company was in the hands of Federal receivers and subject to the jurisdiction of the Federal courts. There were several questions involved in the proceeding concerning contracts for management services, purchasing service, and construction services. The commission expressed its disapproval of these contracts on the ground that the testimony showed no actual services rendered by the related companies for the compensation paid to them.[12]

ALTHOUGH security issues of public utilities must be found to be necessary before being approved by the commission, it does not, in the opinion of the New York commission, follow that such authority once granted would be justified as necessary where unexercised for periods of five, ten, or twenty years. In view of this opinion the commission ordered the cancellation of authority previously granted for the issuance of securities by various utilities which had not been exercised in whole or in part in some cases for periods exceeding twenty years. The commission, however, provided that where companies definitely notified the commission of their desire to retain such authority, they should exercise the authority within six months under penalty of lapsation, or in other cases to justify upon additional showing the necessity for continuation of such authority.

Several traction companies were included in the list of corporations

[10] Parks *v.* Cleveland R. Co. 124 Ohio St. 79, P.U.R.1931E, 321.

[11] *Re* Buffalo & Lackawanna Traction Corp. (N. Y. 1931) P.U.R.1932A, 471.

[12] *Re* New York State Railways (N. Y.) Case No. 6066, June 14, 1932.

When a Formal Determination of the Value of a Plant Is Not Necessary:

"It was ruled . . . that when a utility has reached the point where any reasonable rates fixed would necessarily produce less than an amount which would be regarded as a fair return upon the investment, it is not necessary for the commission to make a formal determination as to the actual present value of the plant."

which were affected by this ruling.[13]

THE Indiana commission in the Gary Case allowed payments to a parent corporation where the evidence showed reasonable services were performed for such payments. Likewise the cost of membership in civic associations was included as a proper operating expense where the railway was complying with a commission ruling that only one membership should be retained in each such association.[14]

OPERATION of one-man cars in order to preserve street railway service, which otherwise would be unprofitable, still meets opposition in some communities. Some years ago the United States Supreme Court sustained an ordinance prohibiting one-man car operations. Since that time, with improvements making for safety, one-man cars have been almost universally approved, and city ordinances prohibiting such operation have in some cases been held invalid. Such was the case in a Federal court proceeding in Georgia where an ordinance had been adopted prohibiting the operating of one-man cars. A preliminary injunction against the ordinance was granted with the statement that a reasonable doubt had been cast on the validity of the ordinance under the city's police power. The court remarked that an ordinance requiring the services of two men for street car operation could not be upheld merely because it had the effect of increasing employment.[15]

THE vicissitudes of the Broad River Power Company, which over a period of years made futile attempts to discontinue street railway operation in Columbia and vicinity, finally resulted in a Federal Supreme Court decision (P.U.R.1930C, 234) denying the company's right to abandon its service. Then the company, which had already abandoned such operation, was faced with a suit to collect penalties for failure to operate; but it was saved from this penalty by a ruling of the state supreme court

[13] *Re* Unissued Securities (N. Y. 1931) P.U.R.1932B, 493.

[14] *Re* Gary Railways Co. (Ind.) P.U.R. 1931D, 455.

[15] Georgia Power Co. *v.* Atlanta (1931) 52 F. (2d) 303, P.U.R.1932A, 373.

that a statute which inflicts upon a street railway company a penalty of $250 a day for every day during which the carrier shall fail to "keep in constant operation a sufficient number of cars convenient and comfortable to transport the usual number of persons desiring transportation," does not have the effect of subjecting to such penalty a company which has discontinued operation on its system because of alleged legal rights which it has litigated without success in the state and Federal courts, and where the company has been required by mandamus to resume operation some years after the discontinuance of service.[16]

No discussion of electric railways is complete in these days without mention of the rivals of the trolley car—motor busses, taxicabs, and trucks. Restrictions on these competitors are growing more stringent as the public realizes that a dependable transportation system may be forced to the wall by carriers which may be unable or indisposed to provide permanent substitute service. Commissions are controlling taxicab rates, the number of common carriers which may operate on the highways, and even the activities of the contract carriers.

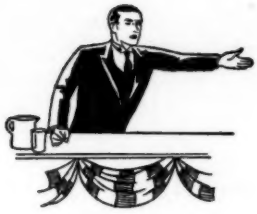
We sometimes hear complaints against "public utility monopolies" when competition is restricted. The word "monopoly" is used to convey an impression of illegality in the same way that it would be used in referring to companies which are not public utilities. The distinction between these monopolies has sometimes been pointed out. This point was considered by the Washington Supreme Court in a case where it upheld a commission order restraining the operation of a motor carrier who had not obtained a certificate of convenience and necessity.

The point was raised by the motor carrier that the requirement of a certificate of convenience and necessity unconstitutionally created monopolies. The court ruled that a "monopoly" within the meaning of a state Constitution forbidding the creation of a monopoly must be construed as meaning an enterprise whose activity is hostile and oppressive to common welfare. It does not apply to motor carriers operating by virtue of certificate grants, in view of the fact that the latter may be compelled to render service at proper rates to the state's satisfaction. This seems to be the outstanding difference between public utilities and other forms of enterprise. Unbridled and uncontrolled monopoly is considered contrary to the public welfare. Public utilities, on the other hand, are regulated monopolies, and since the state controls their operation and limits their charges, they are not hostile to the common welfare.[17]

[16] State ex rel. Attorney General *v.* Broad River Power Co. (S. C. Sup. Ct.) P.U.R. 1932B, 262.

[17] State ex rel. Department of Public Works *v.* Inland Forwarding Corp. 164 Wash. 412, P.U.R.1931E, 394.

The second and concluding instalment of this series of articles will appear in the October 27th number.



Preëlection Promises—and Post-election Performances

What happens when the candidate who volunteers to pry the throttling fingers of the grasping utilities from the economic throats of the public finds his knight errantry is forbidden—by law.

By WILL M. MAUPIN

"WHY are regulatory commissions, especially elected commissions, so unpopular?"

The answer is simple: because primary promises are so seldom converted into after-election performances.

THE three favorite pastimes of the American people are passing resolutions, passing laws, and passing the buck. No other people are so quick to grasp at the cure-alls offered by designing politicians, so prone to complain about their failure to effect the promised cure, or so sure to turn thumbs down on those who warn them against the proffered nostrums.

But deceiving the people by specious promises and flattery is not new, nor is this the first generation to listen with willing ears to the promisers. The first recorded example of it will be found in the Old Testament. One needs but to turn to the account of how Absalom, the undutiful son of David, stole the hearts of the men of Israel. That gentleman was the first politician of history to employ band wagons and to promote handshaking and baby-kissing campaigns. He prepared chariots and fifty horsemen to run before him; he stood on a soapbox on the principal corners and addressed the multitudes. To all who sought justice he said:

"See, thy matters are good and right; but there is no man deputed of the king to hear thee. O that I were made a judge in the land, that any man which hath any suit or cause might come to me, and I would do him justice!"

That sort of political buncombe has won many another demagogue high place in the political life of this republic.

ABSALOM'S modern counterpart pursues the same tactics as his

distinguished predecessor. He appeals to the fears, prejudices, and selfishness of the ignorant, knowing well that if he can but secure their votes he is assured of a majority. He succeeds best where he can make his campaign before a primary. He knows that so many thinking men are so engrossed in their own affairs that they neglect to vote at such gatherings—an unfortunate fact which gives the modern Absalom an advantage that he is quick to seize. With the nomination in the bag, he knows he will receive the votes of the class he appeals to, together with the votes of the "regulars"—the party men who may be depended upon to vote the straight ticket regardless.

My own state, Nebraska, does not differ materially from other states, except, possibly, in the fact that it is the least illiterate of the states. Nebraska, like most of her neighbors, has a direct primary law (which, parenthetically speaking, no lawyer is able to understand), and which naturally does not serve any such purpose as its well-intentioned originators claimed for it. The proof of this fact was illustrated not long ago by an illiterate man who filed for the Republican nomination for president and actually, believe it or not, received more than 17,000 votes in the primary! Later he filed for the Republican nomination for governor and received more than 26,000 votes in the primary.

In the 1932 primaries many candidates are being put forward for office with the state utility commission. Some of them, to be sure, are experienced and capable men, but some of them have but the slightest knowledge of public utility regulation.

New candidates, seeking election to the commissions, are sometimes led to campaigns, as Absalom made his. They declare that the commission is "the handmaiden of the public utility corporations"—always a popular slogan. They insist that only by electing the speakers themselves will the people be able to remove the throttling fingers of the grasping utilities from their economic throats. They promise to restore to the people their rights and to make the utility crooks jump through the hoop. The voters listen gravely and applaud.

But the memory of the voters, unhappily, is short. They forget that by their own insistence they have secured the enactment of certain laws governing the activities of the commissions and designed to protect public and private property. They forget that they instituted courts of justice (or at least of law) to construe those laws and to enforce them. So it is that when Mr. Commissioner Absalom is elected to office and takes his seat he finds that he, like all the rest of us, is bound to obey the law. He discovers that he is handicapped in his efforts to "rip hell out of the utility corporations," as he promised he would do, because the laws do not permit.

Discovering that Mr. Commissioner Absalom is unable to deliver his preëlection promises, the voters proceed to denounce him. Usually they declare that he has been bought up by the corporations and that he has betrayed his constituents. Of course, he has done nothing of the kind; he has merely discovered, like others, that he is bound by statutes that

govern regulation by commissions.

But the voters do have one just cause for complaint, and it is a complaint which must be lodged squarely with themselves. They will not normally hire expert talent to represent them.

The regulated utilities employ the most experienced engineers and the best lawyers and the ablest rate experts obtainable. They seek, properly enough, to present their case in the most favorable light. But the people, when they make protest against a proposed increase in rates, too often rely upon the figures of some alleged technical man who scarcely knows the difference between an insulator and a crossarm, and upon the learning of a lawyer who is as ignorant of investments, rates, and depreciation as a porker is of philosophy.

Utility commissioners in Nebraska —to cite an example—as in other states, sit in a semi-judicial capacity. They hear evidence, consider exhibits, construe the laws governing their actions, and render judgment accordingly. If they judge according to the evidence and the adduced facts, they are honest; if they do not, the supreme court steps in and corrects them. But even when the public is convinced that the commission has erred in its decisions, it seldom carries its case to the court of last resort.

Not one judgment of the commission in a hundred satisfies the public —yet not one decision in a thousand is appealed.

In a utility rate case about two years ago, a proposed rate increase added almost $30,000 a year to the revenues of the company in a rather restricted zone. The ratepayers arose in wrath and actually collected nearly $500 to employ a rate expert and an attorney to fight their battle for them. Had each ratepayer in that zone contributed the amount of one month's increase to the fund, they could have raised more than $2,500, and a two-months' contribution would have enabled them to secure services that might well have won their case before the supreme court.

Another instance in point:

That same utility company secured an increased rate in another zone. Of course, the ratepayers protested the action of the commission. But they spent so much time protesting that they forgot to enter their appeal to the supreme court in the prescribed time. Probably the supreme court is lucky in not knowing the exact measure of the contempt in which it is held by many of those dilatory ratepayers.

Apparently the voters have never thought of a plan to have a law enacted that will provide them, at public expense, with a commission that will be charged with the duty of fighting their battles before the utility commissions. If they ever do think of it, they will probably demand it loudly enough to get it, forgetful in the meanwhile that when they get it they will elect commissioners who will themselves play the Absalom.

"Why are regulatory commissions so unpopular?"

Just because primary promises are not and seldom can be carried into election performance.

What Others Think

The Climax in the Development of the Regulatory Drama in Pennsylvania

UNQUESTIONABLY the Pennsylvania situation is the most important spot on the map of public utility regulation at this time. The disinterested observer is inclined to agree with Governor Pinchot that the individual reputations at stake—those of the late Judge Ainey and of Mr. Benn—pale in significance beside the real question; what will the Pennsylvania inquiry mean to regulation?

The governor has finally goaded a balky state senate into appropriating $100,000 for a complete airing of commission linen, dirty or otherwise. If this inquiry develops into a probe of whether Ainey did or Ainey didn't, or whether Benn was bent or trod the straight and narrow path of a faithful public servant, it will not materially affect commission regulation as a policy of political economy in America any more than the misfeasance of certain New York city magistrates would make us seriously consider junking our judiciary. If, on the other hand, the inquiry develops into a careful and unbiased analysis of the conduct of each individual member of the Pennsylvania commission during the seventeen years of its existence, and that analysis reveals commissioner after commissioner wilting before the pressure of corruption brought to bear upon them by the peculiar contact which they have with utilities—if the test shows that a majority or even that an appreciable number of the encumbents, past and present, have betrayed their public trust, the people may well question whether regulation as an institution is not impracticable—whether the job is just too much of a temptation for the average run of public officials endowed with the average amount of human weakness.

The conviction or vindication of those under fire is, therefore, relatively unimportant except, perhaps, to the men themselves. The real issue is whether average weak mortals can, as a general governmental practice, be trusted with the duty of regulating privately owned utilities.

VIEWED from the latter angle, the Pennsylvania inquiry becomes a landmark event—possibly the Iliad of regulation which may mark the complete acceptance or ultimate rejection of regulation by the Pennsylvania electorate. But even an adverse report upon the present commission will not mean the death of regulation in Pennsylvania unless all historical precedent is reversed. There have been agitations and inquiries before in this field and, while a specific form of regulation has sometimes been condemned, the spirit of regulation, like the mythical bird, the phoenix, has always arisen newer and stronger from the defunct form.

Thus, the Interstate Commerce Act, establishing complete Federal control over the railroads, superseded the previous fragmentary state control and came as a climax to the Granger movement which started in the Seventies. The New York Public Service Commissions Law of 1907 followed the investigation of Governor Hughes and superseded the former control of utilities by local boards and city councils and two previous "do-nothing" commissions with limited powers. The more recent inquiry of 1930 in the same state resulted in greatly augmented state powers. In other words, with the possible exception of a political upheaval

in Arkansas, no inquiry into utility regulation has ever resulted in complete repudiation or even in the diminution of regulatory control.

GOVERNOR Pinchot is of the opinion, however, that this time at least regulation, if proven false during the current investigation, might be junked in favor of government ownership of utilities. In his message to the senate asking for the investigation he stated:

"Either extortion by public utilities must stop or ownership and operation of public utilities by the public will begin. There is no other argument for public ownership which can compare in power with the argument supplied by the greed, injustice, and corruption of the utilities themselves.

"When public utilities are willing to substitute fair play for shameless greed, to stop playing politics for profit, to act as the public servants they were intended to be, call off their lobbyists, quit their bribery, cease their extortion, simplify their rate schedules so that the average man can understand them, and generally act the part of decent and coöperative members of the commonwealth—then the threat of public ownership which they so greatly fear will disappear. But not until then.

"The worst turn the senate could do to private utility ownership would be to quash or delay the immediate investigation that the honest commissioners, the honest utilities, the press, and the people of Pennsylvania have every right to demand."

The Pennsylvania press seems to be unanimously of the opinion that the inquiry should go on, notwithstanding the resignation (which was followed so dramatically within a month) of Judge Ainey and the European tour of Mr. Benn who resigned some time ago. The *Evening Public Ledger* of Philadelphia, a Republican daily, not particularly noted, however, for its admiration of Governor Pinchot, stated editorially:

"If there has been any real intention on the part of the leaders in the senate at Harrisburg to ignore Governor Pinchot's demand for a searching investigation of the public service commission and of the relations of its members with the public utilities of the state, it should be removed by State Treasurer Martin's clear-cut statement of his conviction that the time has come for a full and impartial inquiry that shall go back to the period of the organization of the commission. General Martin was speaking in his capacity as head of the Republican party organization, and while there will be differences of opinion about the entire accuracy of his statement that the party 'has always stood for the highest governmental standards,' any weakness or vacillation now concerning the duty that lies before the party will be a fatal blunder.

"Governor Pinchot's accusations not only against the commission but also against the entire utility industry of the state have been of such a nature as to demand a searching and relentless inquiry, in the interest of the public as well as in justice to those who have been thus publicly arraigned as corrupt officials and arrogant extortionists. The governor's allegations are sweeping but they have been sufficiently explicit to justify an inquiry that shall establish their truth or falsity, that shall bring every corrupt official to justice, expose every culpable utility, and that at the same time shall discriminate between the good and the evil in these vast industries and in the state's legal machinery for regulating them.

"The problem of the senate will not be an easy one, for it is a political body compelled to deal with a situation already deeply impregnated with political rancor and bitter prejudice. If it can, under the circumstances confronting it, make that thorough and impartial inquiry which the situation demands, it will have accomplished the seemingly impossible. But it must make the attempt and upon its success or failure in lifting the investigation above the level of factional strife it will be judged before the bar of public opinion."

ALREADY, friends of Governor Pinchot are finding fault with the way the senate is proposing to conduct the inquiry. The Philadelphia *Record* stated editorially:

"We are about to see a senate nobody trusts 'investigating' the utilities, while the governor, who has won the faith of the people in utility matters, is left out in the cold.

"That is how the situation shapes up at Harrisburg.

"There can be only one explanation for the state senate's anxiety to be the only body to expose crooked utilities, which have been bribing public officials.

"It wants to strike a light blow. It wants to daub chalk white over the dirty hands of bribe-giving utility executives.

"How else can the senate explain its action in ordering its own probe, with its own counsel, while ignoring the demand of the governor for an impartial probe, led by impartial counsel?

"Governor Pinchot has earned the right to better treatment by his long fight on behalf of the people for fair utility rates and fair utility regulation.

"Who does the senate think will be fooled by its 'probe?'

"Everyone knows that many state senators are on the payrolls of public utility corporations.

"Everyone knows that it is these same senators who accepted Ainey's resignation from the public service commission when Ainey was under heavy fire; that these same senators tried to embarrass Pinchot last year by a fake investigation; that these same senators have sat unmoved through ten years of public service commission acquiescence in one utility steal after another. . . .

"Only by the appointment of outstanding counsel to conduct the probe, counsel of unimpeachable integrity and repute, can the senate win the confidence of the people.

"And only by taking the advice of Governor Pinchot can the senate make a proper selection of counsel. The choice of counsel should be in the governor's hands. He should have the final say.

"For he alone has the confidence of the public in this regard—and he, alone, appreciates the fact that we are facing an emergency in government. What must Pinchot do to drive into the skulls of the senators the truth that if a shoddy investigation is held, confidence in public regulation of private monopoly will be shattered forever?"

The *Record* apparently believes that unless the senate as judge submits to the direction of Governor Pinchot as prosecutor, the result will simply be a white-washing expedition. In *quasi* criminal proceedings it is rather unusual for the prosecutor to tell the judge how to conduct the trial.

—F. X. W.

MESSAGE TO THE PENNSYLVANIA SENATE. By Governor Pinchot. *United States Daily.* August 11, 1932.

EDITORIAL. *Evening Public Ledger,* (Philadelphia, Pa.). August 16, 1932.

EDITORIAL. Philadelphia *Record.* August 19, 1932.

The Doherty Libel Suits: A Lesson or a Side Show?

ONE of the most interesting and original aspects of that many-faceted magnate Henry L. Doherty is his streak of "fighting Irish." While many of the utility leaders endured in comparative silence, broken only by an occasional academic address before other utility leaders, the abuse of their critics, the king of Cities Service fights back. Moreover he usually fights fire with fire, and occasionally carries the fire right into the enemy's camp.

Many utilities have suffered from attacks from the press, warranted or otherwise. In one or two instances they have attempted to restrain by legal injunction such publications. These incidents brought down the wrath of the whole Fourth Estate by threatening what is to them the most sacred section of the Bill of Rights—the freedom of the press. But when the Kansas City *Star* began its fight on the Doherty policies back in 1928, Mr. Doherty did what no other utility has apparently attempted; he hauled his adversaries into court with libel suits. He attempted, unsuccessfully, to have these alleged libelous publications barred from the mails, and finally he went down to Kansas City and bought himself a controlling interest in a competitive paper, the Kansas City *Journal-Post.* He says now that he is just beginning to fight.

Last July he filed another libel suit against the *Star* boosting the amount of damages sought from that newspaper to $54,000,000. The reply of the *Star* to this move was the following editorial:

"Long delayed suits for fantastic amounts brought by Doherty interests at this time against the *Star* have one obvious purpose. They seek to divert attention from the real issue of fair gas rates by making it appear that the controversy is simply a *Star*-Doherty fight. The *Star* believes public attention cannot be thus diverted."

To this was added a statement by George B. Longan, president and general manager of the *Star* company, in which he said:

"The *Star* is not concerned about the new Doherty suits nor about any threatened suits. The *Star* has no doubt there is only one purpose and that is to divert attention from the gas rate controversy which is now pending decision in Kansas. These suits in the *Star's* opinion are smoke screens. The *Star* is interested in only one thing, that is an equitable gas rate and the *Star* does not intend to be diverted from that issue by a side show, which, in its opinion, this is."

The following extract from an editorial in the Kansas City *Journal-Post* explains the Doherty position:

"In defending myself and my people through these actions I hope to accomplish more than the mere collection of dollar damages. I hope to be able to help free the people and the business interests of the Middle West from the buccaneering and terroristic tactics of the Kansas City *Star*, extended not only to the destruction of business and business institutions, but to breaking down and defamation of private character, and by these suits to provide an example through which the public and the public institutions may be protected in the future."

An interesting viewpoint of this legal battle of journalism is contained in the following excerpt from that able organ of the Fourth Estate, *Editor & Publisher:*

"Henry L. Doherty, or Cities Service, has now managed to pile up suits for libel aggregating $54,000,000 against the Kansas City *Star* and its officers and editors. This is, by far, the largest sum anyone has ever asked from any newspaper in libel litigation. In July, 1931, the so-called billion-dollar public utilities magnate filed suit for $12,000,000, then considered a record amount, but the legal battery the Doherty concern maintains took the cork out of the ink bottle this week and wrote into their briefs sums which stagger imagination—$42,000,000, 'actual and punitive' damages. When the Doherty dander is up and flaring a few millions, here and there, mean little. Never has an American newspaper been better flattered.

"All of the facts are not yet in, but common sense dictates that the Fourth Estate should not take Mr. Doherty's fireworks too seriously. Anybody with the means and legal talent can file libel suits, but it's another thing to get judgments. Mr. Doherty notoriously plays his game of chess without much regard for pawns. He enjoys big, sweeping gestures in his commercial propaganda. He fights for mass effects on the public mind. To make a point he will go to extraordinary extremes. For instance, it is said that four of the six libel suits he brought this week, with the usual flourish of trumpets, deal with matters so old that the statute of limitations runs against them. If Mr. Doherty was conscious of this when the suits were filed, but forced the action for some possible effect on public opinion, his behavior certainly cannot be taken seriously by any sensible person, much less any responsible newspaper. He is free to make anonymous charges against the *Star's* editors and publishers, alleging 'conspiracy with unknown persons,' but as a man of power he has had plenty of time, surely, to identify his enemies, if indeed they exist. All such talk, of course, tends to obscure the issue in the *Star's* editorial policy—that gas rates are exorbitant.

"We shall take a lively interest in Doherty libel suits against the *Star* if and when they come to trial."

It is all very well for the Fourth Estate to assert calmly that it will "not take Mr. Doherty's fireworks too seriously" but common sense dictates that, whether or not the Kansas City *Star* will ultimately ignore these Dohertian didoes will depend entirely upon twelve good men and true. If these suits are, as the Kansas City *Star* claims, mere camouflage without intrinsic merit, they will either die on the docket or in the jury room. In either event the laugh presumably will be on Mr. Doherty. But if there has been real libel committed and a jury finds a verdict for even one fifty-fourth of the amount asked, which would be one million dollars, it is difficult to see, notwithstanding the views of the *Editor & Publisher*, how the Kansas City *Star* can continue its nonchalance. Perhaps a few thousand dollars spent on good lawyers and sound libel suits might really make a few newspaper editors put their pencils in their mouths at least once before uncorking the seven vials of their editorial wrath without checking the facts. There are, indeed, few editors who would not grow reticent when they are

confronted with the prospects of a million-dollar judgment.

—W. R. N.

EDITORIAL. Kansas City *Journal-Post.* July 6, 1932.
EDITORIAL. Kansas City *Star.* July 7, 1932.
EDITORIAL. *Editor & Publisher.* July 9, 1932.

The Persecution of the Street Railways by the Politicians

NEVER in the history of public utility regulation in the United States has there been such blind disregard of property rights by the public as has been accorded to the street railway industry. This callousness is so ruthless that it is, from the viewpoint of an impartial observer, interesting. The public generally can be fooled, as Abraham Lincoln observed, only for a time, and at heart the *vox populi* is likely to be fundamentally fair although periodically bad tempered. What can be said, therefore, of this persistent attitude on the part of the public that street railway officials are scoundrels, all of whose property should be taken away from them by slow torture of confiscatory rates?

Probably no better example exists in the country of this state of affairs than the case of the United Railways of Baltimore which is, just at present, about two jumps ahead of the sheriff. The facts in the Baltimore case are numerous and complicated but, to summarize briefly, it appears that back in the good old days of free competition in the utility field when it was every man for himself and the devil take the hindmost, the street railway service under the competitive system in Baltimore became such a mess that public interest, not to mention public indignation, demanded a unification of the lines under common ownership. But when the newly organized company asked for a franchise, the same city council that had been demanding unification suddenly became slick as a hound's tooth and laid down the proposition that the railway company must give 9 per cent of its gross receipts to the city to be used for the public parks. If it refused—no franchise!

Well, the street railway business looked pretty fair just about that time, so the company took a chance. Of course, the city parks have no more to do with the railway operation than the city garbage disposal plant. The railway might just as logically have been asked to support the one as the other, but that was how the matter stood when the traction magnates signed the dotted line.

THEN came the automobile and hard times for the street cars. Today the street car company of Baltimore is down and almost out. The referee is counting while the mob seems to be enjoying the fun. Just why the spectacle of a mass transportation system being annihilated by systematic confiscation should appear funny to a public which has everything to lose and nothing to gain when the rails are yanked up is difficult to understand. It moved such a sober and level-headed citizen of Baltimore as H. L. Mencken, famed editor of *American Mercury,* to write a piece for the Baltimore *Sun* entitled "The Prudence of Demagogy" in which he poured his withering scorn upon the peanut politicians for "having succeeded in reducing the United Railways to the estate and dignity of a bonus marcher."

It appears that the managers of the railway company asked the city council to abolish the park tax. It was pointed out that the street cars did not use or need the parks any more than anybody else—in fact the parks were chiefly used by its deadly competitor, the auto-

mobile. If the tax were used for street paving between tracks there might be some (very little) sense to it; but to tax a dying business in order to provide a skating rink for flivvers is something like bringing a sick Irishman oranges. The public service commission has condemned it, but was powerless to do anything about it. Twice the city council refused. Why? It was admitted that rates were inadequate to yield a return on the investment that would interest an ambitious newsboy. It was admitted that the company was well managed, but likely to go under unless immediate relief were given, but there was always that binding legal obligation of the franchise. No argument could swerve the city council away from that point. It was variously called a "sacred binding obligation" and a "solemn contract having all the force and effect of a law." It was somewhat ironic to witness the citizens of Baltimore most of whom have been so outspoken through the ballot box of their defiance of the Eighteenth Amendment to the Constitution suddenly develop a tender devotion for the inviolability of a city council franchise ordinance.

BUT such undoubtedly was the sentiment of the ubiquitous *Pro Bono Publico* and "Justinians" who deluged the Baltimore papers with letters to the editor. Here is a sample from the Baltimore *Sun* of August 20th:

> "Is the park board a business institution engaged for the purpose of financial profits, since it now becomes necessary to look out for its interests? Or were not our public (?) parks instituted for the purpose of furnishing recreational facilities for the boys and girls, providing safe and adequate space for the building of body and character? And has not public money directly or indirectly furnished the wherewithal to provide these park facilities? What has caused the necessity for the charging of fees for the use of tennis courts, baseball and football fields, etc.? Is it because the city does not intend to insist that the politically powerful United Railways fulfil its obligations under its franchise agreement?
>
> "In a recent report of the Federal Children's Bureau it is reported that more than 200,000 boys and girls under twenty-one years of age have become virtually hoboes, wandering from place to place, and in their travels meet men and women whose entire influence is destructive—criminals, fugitives from justice, degenerates. The same thing can happen to our boys and girls when driven out of public (?) parks —by the congregation on street corners and other places of questionable character, with time on their hands to meet up with evil influences, when they could be engaged in innocent pastime and at the same time improving their bodies and characters."

The sentiment is very laudable of course. It goes without dissent that parks are a good influence on growing boys and girls, but just what is the justice of saddling their costs on the railway company?

AFTER two flat rejections by the city council of plans to modify the park tax, Mayor Jackson proposed a measure which would, among other measures, reduce the tax from 9 to 2 per cent. Here is a description of the plan by an obviously hostile paper—the Baltimore *Post:*

> "What does the city get for agreeing to such a reduction? It gets a promise that, after the United has completed a financial reorganization, it will try ***the experiment*** of reducing car fare. The car-fare reduction promise was also part of the park-tax adjustment plan proposed by the city administration some weeks ago. In one respect, however, the new agreement is better than the old. It does commit the company to a definite time for undertaking the car-fare *experiment.* The *trial* is to be made within three months after completion of the company's financial reorganization, for which a period of two years is allowed. Under the earlier plan, the experiment might have been deferred forever.
>
> "But, while the current proposal is fairly definite as to time, it is indefinite as to amount. The single fare of 10 cents would be retained, but three tickets might be sold for a quarter or weekly books might be sold at reduced rates or some other reduction instituted. That's too vague a proposition. But vagueness is not its worst point.
>
> "The feature which makes the proposal impossible from the public's point of view is that this indefinite car-fare reduction would be *entirely tentative—an experiment and nothing more.* If the company did not like the result of this experiment—and the company would be the sole judge of its

success—then all bets would be off. Up would go the car fare.

"The park tax would also be off. Remember that. But would the park tax go up—could it go up—if the car fare went up? Oh, no. That is the beauty of the plan from the company's point of view and the enormity of the plan from the people's point of view. The park tax *could not* go up. It would be tied forever at 2 per cent, unless, indeed, some further reduction were made.

"What the city is asked to do is to surrender park-tax revenue amounting, we will say, to $700,000 a year in return for a promise of a nebulous and purely tentative car-fare reduction. It's too preposterous for words and the wonder is that Mayor Jackson and the officials of the United Railways should take up the council's time in discussing it.

"As a sort of bonus and makeweight, the city is being offered a 20 per cent share of the company's net profits, assuming there will be any, beginning with 1939, the year the park tax gets down to 2 per cent, never to rise again. The company agrees in the new plan to reduce fixed charges, deductible from gross before the computation of net, by $1,000,000. At first glance, it looks as if an effort were being made to make the net amount to something, so that the city really would get something as its 20 per cent."

It is apparent that even the editor who composed the foregoing passage had very little hope of the company making *any* appreciable net profit. Street car companies, it would seem, are just not supposed to make profits.

HERE is a more personal appeal to the city council in an editorial appearing in the same paper:

"Gentlemen:

"For the third time you stand as the sole defense of the people against an ordinance which would commit the city to a one-sided, irrevocable bargain with the United Railways.

"Twice before have you stood in this position and you—or the majority of you—have shown that the public's confidence was not misplaced.

"You rejected, with the indignation it deserved, the United's original ordinance. You also rejected the substitute measure which the mayor of this city had the audacity to propose and which was scarcely better for the city than the ordinance which the company itself submitted.

"Now you are being asked to pass a third measure which, like its predecessors, has been conceived in the interest of one corporation and with but small regard for the common good. You have been told—and are being told—that an emergency confronts the United Railways, that if you do not pass this ordinance, the company will go into receivership and the community will be the loser.

"The disingenuous character of this argument is at once apparent from the fact that, to give emergency relief, you are asked to adopt an ordinance which will reduce the gross receipts tax for all time. The Vernay committee, which was neither ignorant nor prejudiced, which gave diligent study to the park-tax problem and the United Railways' financial position, warned against this very thing.

"Give emergency relief now, counseled the committee. Study the question of permanent park-tax reduction later, in more normal times.

"But that did not suit the company. And as it did not suit the company, the plan did not suit the mayor. Each ordinance that has been presented on behalf of the company, including the measure to be introduced in the special session today, has contained the very proposal which the Vernay committee rejected.

"The insistence of the company and of the mayor upon this wholly unjustified provision prevents today, as it has done for months, the according of emergency relief to the United.

"That, gentlemen of the council, is not your fault. You have at all times stood ready to give the company a reasonable amount of emergency help, you have been almost pathetic in your eagerness to work out some relief plan, but the company would not have it so.

"Your choice today is between the United Railways and the people of Baltimore."

NOT all Baltimore papers are so hostile to the railway company there. Here is a passage from an editorial from the Baltimore *Sun:*

"There is no nourishment for anybody in this town in a collapse of the United. There is no nourishment in that whether one thinks of permanent tax sources, of stability of property in the sections which rely on the United's service, or of protection of the general financial structure of the community. There *is* nourishment in an adjustment of the city's relations with the United which will help it to keep on its feet and go on with its business. And the basis for an adjustment is better today than anyone dared hope a few months ago, for the company has now faced up to the bitter duty of undertaking a reorganization of its capital charges. Everyone has

known that this reorganization was inevitable. The company's officials have known it and have long admitted it privately. But they hesitated to start the job in these difficult times. Now, under pressure of constantly worse conditions, they have become bold enough to take the step and they undertake to cut payments to bondholders (the real owners of the company) by $1,000,000 a year. It is a real step forward to a half-way meeting point.

"Under these circumstances it would be reckless folly for members of the council to hold fast to this, that, or the other pet notion, at the expense of a breakdown in the negotiations. A decent regard for the welfare of the city, which is not to be measured by the applause or lack of it from extremist groups, will dictate such concessions in the park tax as are proposed by Mayor Jackson—especially in view of the provision for payment to the city of one fifth of the earnings that will remain after the meeting by the company of its fixed charges, now to be reduced by $1,000,000. The members of the council will find that their own self-respect and their own ultimate political interest will coincide with a common-sense, businesslike treatment of this grave question. This is no time to cut capers for the pleasure of the unthinking."

Nor are all the letters to Baltimore newspapers hostile to the railway company. Here is a sample from a letter to the Baltimore *Sun:*

"Surely the taxpayers and the voters will have no patience with public officials who permit themselves to be swayed in so important a matter as this by anything except reason and facts. When the experience of other cities is considered and we see the Chicago street railways and the Boston street railways, among others, supported at great expense to the taxpayers as a result of expensive receiverships, and when we see the taxpayers of New York city forced to make up an annual deficit of many millions of dollars in order to preserve the nonprofitable 5-cent fare, we should feel justified in urging the speedy consummation of a reasonable agreement that would prevent any such burden upon the taxpayers of Baltimore."

WHAT happens to the Baltimore railway case is more or less of consequence only to the citizens and the utility of that city. But what should be of interest to thinking people throughout the country who are interested in the success of private operation of utilities—(particularly street railway utilities)—under proper governmental regulation, is that city councilmen and the local politicians cannot be depended upon to take a fair or far-sighted view of the consequences of ruining utilities with unjust taxation.

As long as local politicians have the power to make or break utilities, they will selfishly court popular acclaim and mislead the public to gain or retain office at the expense of ultimate municipal welfare. Such powers should either be modified or transferred to the state commissions who have generally exhibited a greater propensity for fair play.

—F. X. W.

LETTER TO EDITOR. *Baltimore Post.* August 20, 1932.

EDITORIAL. *Baltimore Post.* August 23, 1932.

EDITORIAL. *Baltimore Post.* August 25, 1932.

LETTER TO THE EDITOR. *Baltimore Sun.* August 2, 1932.

EDITORIAL. *Baltimore Sun.* August 18, 1932.

The Crisis in the Field of Mass Transportation

SOME centuries after the Greek natural philosophers had discovered the simple truth that a chain is no stronger than its weakest link, the intrepid Carthaginian conqueror, Hannibal, racing over the Alps toward what he hoped would be the destruction of Rome, came face to face with the analogous proposition that the progress of an army is only as fast as its slowest supply carrier.

Ever since Hannibal's time we have had recurrent historical instances of the fact that progress is inexorably linked with efficient transportation. This is just as true of the modern progress of business as it was of the march of the Carthaginian invaders.

No nation or civilization has ever

gone very far ahead in any other line of endeavor without showing some improvement in the means of communication and, conversely, no striking advance in transportation has ever failed to have a salutary effect upon other lines of endeavor. The reason, of course, is obvious. Better transportation means better communication of ideas, more trade, larger markets, and improved artistry.

BUSINESS in the United States today is trying to totter to its feet after an era of depression that at times threatened to be fatal. Business leaders realize that unprecedented efforts towards efficient trade practices must be made if business recovery is to be hastened. And what is their first thought? Transportation!

It is not surprising, therefore, that the United States Chamber of Commerce should say that business recovery is linked closely with local transportation in all urban communities and that business men should coöperate actively in seeing that it is maintained. There is little dispute as to that. The big problem is "How?"

The United States today unquestionably faces the cross-roads in the matter of local transportation. Street car companies everywhere are at the end of their resources in their losing fight against the private automobile, the motor bus, and the cut-rate taxicab. Every day they fall into the hands of receivers like leaves from a tree stirred by an autumn breeze. America must decide and decide now. Will she banish the street car to the scrap heap with the horse car or will she afford the street cars all the protection that full regulation can afford?

Such was the general spirit of the question proposed in the national referendum just sent out by the United States Chamber of Commerce, based on a national investigation by a special committee. Specifically the ballots ask for an expression of the members' opinion on the following eleven resolutions:

"I. A program for efficient and coördinated city passenger transportation taking into account the public benefits to be obtained per dollar expended by transportation companies or the public is vital to stability of property values and orderly development of urban communities."

"II. Investments in existing facilities should be utilized to the fullest extent compatible with the inherent advantages of each form of service.

"III. The solvency of all forms of local transportation requires coöperation of business leaders, public officials, and transportation managements for fostering responsible private operation under proper regulation.

"IV. Public regulation should encourage efficiency of transportation agencies, provide proper coördination among them, and prevent unfair competition.

"V. Public regulation of all types of local public passenger carriers in each metropolitan area should be centralized in a single body.

"VI. Development of differential rates for off-peak and short-haul service should be encouraged.

"VII. Taxicab rates, in communities where there is extensive demand for taxicab service should be designated by regulatory authority upon the basis of costs and reasonable profits, and charges should be determined by the taximeter.

"VIII. Franchises should be of the indeterminate type and be flexible in their terms subject to regulatory authority.

"IX. There is urgent need for relief from oppressive special taxes, paving requirements, and other unfair burdens.

"X. Where the public interest requires additions to transit facilities, and the cost cannot be financed on the basis of prospective receipts from users, the public should participate in the expense, with assessment against property owners for any special benefits.

"XI. Traffic regulation should give agencies of mass transportation fair opportunity to function efficiently in accordance with their capacity for service."

THE report of the committee which prompted the referendum reveals that more than fourteen billion passengers are being carried annually by electric rail, bus, and trolley bus lines in cities, and that a continuation of their service is imperative; but nevertheless it appears that the financial condition of most lines is so critical that unless immediate remedial steps are taken service cannot continue. Public coöperation, which will enable private managements to carry on, or subsidy by public funds,

was said to be inevitable; but before such steps are discussed there is immediate necessity for relief from unfair competition, including paving costs and taxes which sometimes total as much as one tenth of the gross receipts of a street railway company. There is also an immediate need for relief from unfair competition such as that furnished both by cut-rate taxicabs as well as by the unregulated bus operations.

As to the question of whether the street car ought to be junked in favor of the motor bus, the answer of the special committee is emphatically in the negative. The report holds that it is necessary to retain the electric rail lines because they are the backbone of local transportation. The report points out that the electrical rail car is the most economic user of street space in all except 29 of the 275 cities of the United States having more than 25,000 inhabitants each. Furthermore, while many electric railways have adopted the bus as a supplemental service, the committee found no indication that the bus is likely to supplant entirely the rail lines. The committee's survey showed that in ten cities with a population in excess of 500,000 from 50 to 79 per cent of all persons arriving in the central business districts came by means of mass transportation carriers. The report continued:

> "Despite the increased use of private automobile and taxicab, statistics show that the mass transportation agencies as a whole are carrying substantially as many passengers as ten years ago, although in many communities this is not the case. In 1930 more than fourteen billion passengers were carried in our cities by street railways and affiliated bus lines. This traffic was handled by 580 companies with a capital investment in their city passenger transportation business amounting to $3,350,000,000. Although these companies are rendering vital public service, the public has to a serious extent lost confidence in their securities, and the companies have, therefore, suffered from their lack of credit. This has made it impossible to improve and extend facilities as needed, and also has made it extremely difficult and, in many instances, impossible to finance maturing obligations."

The report of the committee warned against adopting hastily conceived traffic congestion relief plans. It was observed that in many cities such hastily adopted programs had inflicted great burdens on taxpayers and irreparable losses to property owners and business men through the shifting of business centers. In all such plans care should be taken to utilize existing transportation systems. The report stated on this point:

> "A major problem before every city is that of obtaining full utility from present travel facilities and of planning additional street and transit improvements so that maximum benefits will be obtained with a minimum of expenditure. This matter is charged with a major public interest and is of particular significance and important to business men. It involves on the one hand relief from congestion to an extent that will eliminate the present threat to business and property values in central areas caused by the increasing difficulty of reaching them. On the other hand, it involves the extremely important problem of halting the rapidly mounting burden of public taxation resulting from expenditures for relief measures."

The first step toward assisting the current managements of transportation agencies to develop their facilities to their full economic usefulness was said to be the immediate establishment of regulatory protection. Operation of taxicabs under meter service is strongly endorsed as being fair to both drivers and the rider and is conducive to public safety by virtue of careful operation. There was the unique suggestion that mass transportation facilities are so necessary to public welfare that the subsidy out of public funds might ultimately be warranted. The committee suggested the application of public funds to transit improvements where limited receipts would make them impossible.

REFERENDUM No. 61. United States Chamber of Commerce. August 27, 1932.

REPORT OF SPECIAL COMMITTEE ON CITY PASSENGER TRANSPORTATION. United States Chamber of Commerce. August 28, 1932.

The March of Events

High Court May Pass on Authority to Determine Power Investment

THE Clarion River Power Company has petitioned the Supreme Court of the United States to review the decision of the court of appeals of the District of Columbia, which held that the Federal Power Commission has authority to determine at the present time the amount of investment in the company's Piney Project on the Clarion river in Pennsylvania.

The company holds a 50-year license under the Federal Water Power Act for the project. It is contended that the commission lacks authority to make a present investigation and determination of the investment in the project but that such determination must be made by a Federal equity court at the end of twenty or fifty years of operation under § 10(d) or § 14 of the Water Power Act.

The cost of the project, according to a statement filed with the commission, is some $11,000,000. The accounting division of the commission recommended the elimination of over $6,000,000 of items and fixed the cost at about $4,645,000. Suit was instituted to restrain the power commission from holding a hearing on the matter, or adjudicating the cost, or requiring the company to adjust its books to conform to such adjudication.

The court of appeals of the District of Columbia has upheld the dismissal of the company's complaint. It was ruled that the commission has authority, upon completion of a project, to ascertain the original cost and net investment of a licensee. Such a determination was said to be essential to the exercise by the commission of its regulatory powers.

Counsel for the power company pointed to § 14 of the Water Power Act and urged that Congress has provided that the determination of investment is to be made by a Federal court in equity in case the commission and the licensee cannot agree, and that such agreement and determination is not to be made upon completion of a project, but at the end of twenty years, when the licensee is required by the statute to establish and maintain amortization reserves in excess of a reasonable return, or upon the termination of the license at the end of fifty years when the United States may take over and operate the project on the payment of the amount of the net investment.

Arizona

Governor Defends State Control of Water Power

GOVERNOR George W. P. Hunt, in a letter to Governor Gifford Pinchot of Pennsylvania, defends the right of a state to control the water power within its borders. This letter is in reply to an inquiry from the Pennsylvania governor for suggestions for a law to clarify the interstate water situation. Governor Hunt expresses the opinion that a constitutional amendment rather than an act of Congress is necessary.

The Constitution does not mention among the powers given Congress the control of irrigation water and hydroelectric power, it is pointed out by Governor Hunt. He states that the Supreme Court has repeatedly said congressional control of rivers is limited to navigation, but if water and power control, originally vested in the states is denied the Federal government by the reserve clause of the Constitution, it would appear that this same reservation exists against the judicial as well as the legislative branch, and that the Federal court should not constitute itself a paternal authority to divide water between the states as it personally thinks most equitable in each individual case. Quoting in part from the letter:

"As the states have no allegiance to intangible and impotent international laws, the recent assertion that the court is following these in its water decisions does not appear to be justified. In other words, the supreme court should determine what laws apply, and their meaning, but not legislate or create laws regarding subjects neither delegated nor implied to the Federal authority.

"Constitutional amendments and interstate contacts provide methods of handling provision omitted from the Constitution. Therefore, there is no need for small appointed courts to originate laws, and I think that they have assumed too much authority in setting aside the old appropriation laws of the West and the riparian laws of the East by their recent decisions asserted based on equity.

"It is generally admitted that during the

first century of our history the courts construed our Constitution much more literally than at present, and that lately (no doubt in response to a popular opinion) they have given decisions that have increased the power of the national government at the expense of the states.

"The growing popular opposition to the extension of Federal bureaucracy may reverse this tendency, but it appears to me that it would be safer if our nation depended on changing our national Constitution by amendment, rather than by changing the personnel and the opinions of the members of the court."

The governor goes on to say that the Supreme Court in the Hoover Dam cases announced a legal fiction in saying it took judicial notice that the Colorado river was a navigable stream, but in fact there had been no navigation for several decades. Moreover, he said, the court could have taken notice that Congress subordinated navigation to other uses on the Colorado river in approving the Santa Fe compact and Boulder Dam Act. He expresses the opinion that the states should have the same right to tax water power that Pennsylvania has to tax her anthracite coal before exportation. If the Hoover Dam site was taxed, as Maryland taxes the interstate power at Conowingo, Arizona would secure yearly $1,500,000 in taxation. He states further:

"I fully realize the superior necessity of water for domestic purposes over that of irrigation; also that it would be uneconomical and un-American to destroy wealth by drying up present cultivated land in one state in order to bring in new land in another, but I resent the subterfuge by which present water necessities are used to give one state a monopoly on all future development.

"As water is from 10 to 100 times as valuable for domestic purposes as for irrigation, certainly cities in need can pay for it. I doubt that the Federal government is justified in subsidizing city waterworks of Los Angeles out of the Federal treasury, but I am certain that it is unfair to divert Arizona resources for such subsidizing."

Arkansas

Little Rock Council Defers Rate Cut Order

A LITTLE Rock city council meeting, after a 3-hour debate on an ordinance reducing telephone rates 25 per cent, ended on August 29th with an 8 to 6 vote in favor of a motion to refer the measure back to the finance and utilities committee and City Attorney Linwood L. Brickhouse. The ordinance had been approved by the utilities committee and the council as a committee of the whole, but argument was started when the chairman of the utilities committee offered a resolution as a substitute which provided for the appointment of an appraising engineer to work with the telephone company's engineers in a revaluation of the property.

Aldermen favoring the passage of the ordinance charged that an effort was being made to block a reduction in telephone rates through delay. Those favoring the delay justified their position with the argument that additional evidence will be necessary before the council can take action which would have a chance to be sustained in the courts. They maintained that their efforts were merely directed toward avoiding the useless expenditure of the city's money in a legal battle which could not be won without more supporting evidence.

California

Commission Speeds Construction of Union Station at Los Angeles

THE state railroad commission has announced that since the three railroads involved in the construction of a new union passenger station at Los Angeles have not yet agreed upon an apportionment of the cost, the commission itself will make the apportionment in order that the work may proceed without further delay, it is reported in the *United States Daily*. The commission has cited the Southern Pacific, Atchison, Topeka & Santa Fe, and Los Angeles & Salt Lake Railroads to show cause why this action should not be taken.

The commission ordered the construction of the station in the so-called Plaza area, together with the necessary track connections and terminal facilities, at a cost of approximately $10,000,000 in substantial compliance with a specific plan outlined by the

commission. This order was entered in 1927 but its validity was contested and was finally upheld by the Supreme Court of the United States in May, 1931. This brought to a close a controversy which was begun in 1916 upon the filing with the commission of complaints by various civic organizations alleging that existing passenger terminal facilities were inadequate. A statement issued by the commission declares:

"Under the commission order of 1927 it was anticipated that the carriers would agree among themselves upon a division of the capital costs incident to the construction of the station within a reasonable time after the validity of the commission order was established. Although the Supreme Court of the United States upheld the order in May, 1931, the carriers have not yet effected an agreement on the division of costs. The commission, acting under specific authority of the Public Utilities Act, has cited the carriers to show cause why the commission should not proceed to apportion the capital costs."

President Clyde L. Seavey of the commission said that it is particularly appropriate that the construction of facilities go forward at this time in view of the present economic conditions as the carriers can take advantage of the existing low level of labor and material costs and the public will be greatly benefited by the stimulation of business conditions in the city of Los Angeles which would result from the building program. He said further:

"It has been suggested that the carriers might well apply to the Reconstruction Finance Corporation for a loan of the amount of money required for the construction of the project, some $5,500,000 of new money. No doubt this possibility is receiving the consideration of the carriers and may well furnish a means of immediately financing the improvement. Under the Reconstruction Finance Corporation Act the Interstate Commerce Commission must approve the applications of the carriers for loans before the same may be made. No difficulty in this regard should be encountered, the Interstate Commerce Commission having twice declared the project to be in the public interest and necessary."

Government Hydro Power too Costly for Utility

THE Southern California Edison Company contends that it can generate power at its modern Long Beach steam plant more cheaply than power can be purchased from the Boulder Dam hydro plant now under construction with government funds. It has offered to the Los Angeles city council to relinquish its claim to purchase 9 per cent of the total power to be generated at the dam, plus an additional amount up to 18 per cent in the event that the states of Arizona and Nevada do not take the shares allotted to them.

The company made the offer, according to the *Wall Street Journal*, in answer to charges that it was attempting to monopolize the purchase of power from the dam. Two members of the bureau of water and power commission, it is reported, have recommended that the council accept the offer.

Commission Refuses to Investigate Rates Already Low

THE California commission, according to the San Bernardino *Sun*, has notified city officials of the commission's denial of a state investigation looking toward reduction of rates of the Southern California Edison Co. Ltd., the Associated Telephone Co. Ltd., and the Southern Sierras Power Co., but the commission has taken under advisement a petition for reduction in rates of the Southern California Gas Company.

The ruling against the proposed rate inquiry is explained on the grounds that gas and electric rates are now lower in relation to the costs of living in general than they were during the prewar period of 1913. The commission stated that it had been engaged for some months in an expert study of operations of the Southern California Gas Company, and that if the results of this study indicate that the rates of the utility are too high, the commission will then be in a position to take some action regarding them. The commission ruling set forth the following comparison of gas and electric rates for 1913 and 1932:

"The domestic consumer paid $2.40 per month for 30 kilowatt hours of electricity for ordinary household purposes in 1913, compared with $1.59 in 1932. This shows a reduction of 33.8 per cent since the prewar period. The power rate per month to a consumer of 4,500 kilowatt hours was $101 in 1913, compared with $83.25 at present, showing a saving of 27.5 per cent in the 1932 power rate.

"The consumer using 2,000 cubic feet of natural gas or 3,750 cubic feet of manufactured gas per month paid $3.75 in 1913, against $3.16 in 1932, reflecting a reduction of 15.7 per cent in the gas rates in San Bernardino since the prewar period."

The commission states that after reviewing data in its files relative to the operations of the telephone company, particularly in the San Bernardino territory, it does not appear that an attempt to reduce these rates would be justified at this time.

Municipality Increases Its Water Rate

AN ordinance providing for increases in municipal water rates has been adopted by the city commission of Alhambra in the face of a referendum ultimatum by a citizen who asserts he is supported by a large group of other citizens in opposing the new rates. He threatened to force the question of rate increases to be a popular vote.

Colorado

Right of Pipe Line Company to Serve in State Questioned

THE public utilities commission has ordered the Colorado Interstate Gas Company to show cause why it should not be refused the right to do business in the state. This company owns and operates the pipe line from Clayton, New Mexico, to Denver, which brings natural gas from the panhandle field of Texas into Colorado.

The commission, according to the Denver *Post,* declared that the company is a public utility engaged in intrastate commerce and that it should obtain a permit to sell gas in Colorado and offer a schedule of rates. The company contends that the sale of gas to various industrial concerns in Pueblo, Colorado Springs, and Denver does not constitute business in intrastate commerce and that it does not need such a permit.

The action against the company is looked upon in utility circles, according to the *Post,* as merely a move to start an investigation of gas rates in the state. Chairman Worth Allen of the commission is quoted as saying that the commission would be unable to make any decision concerning rates to retail consumers until the basic costs of delivering gas in Colorado had been determined. The hearings on the rights of the Colorado Interstate Gas Company are expected to bring out the details of costs on delivery of gas to the state of Colorado. Quoting from the *Post:*

"The Colorado Interstate charges the Public Service Company of Denver 40 cents a thousand feet for gas. The rate of $1.10 a thousand feet charged Denver consumers is based upon that charge of 40 cents.

"The Colorado Interstate, however, sells gas to the Colorado-Wyoming Pipe Line Company at the Denver gateway at 17 cents a thousand, to sell to distributors in northern Colorado cities at 40 cents a thousand.

"The Colorado Interstate, through its subsidiaries, buys gas at the Texas fields for 7 cents a thousand feet. It is proposed by the commission to find out why the cost of gas increases from Texas to Colorado from 7 cents to $1.10 a thousand."

District of Columbia

Five-cent Fare for Short Haul Is Urged

PEOPLE'S Counsel Richmond B. Keech, in an open letter to the public utilities commission and the Washington street car and bus companies, has urged the adoption of a 5-cent fare for short hauls, with the regular 10-cent fare remaining for city-wide travel, we read in the Washington *Star.* This idea is put forward as a constructive step aimed at saving the traction companies from financial disaster.

He fortified his letter with figures showing a sweeping decline of the mass transportation business in Washington. The decrease since 1919 is said to be 34.6 per cent. Higher fares, he asserts, have not been of any help.

Mr. Keech said that the figures pointed to an industry not stagnant but actively and consistently declining. The proposed merger, he said, would relieve the company of some of their expenses in the way of paving taxes and the salaries of street-crossing policemen, but it would do nothing to arrest the steady decline in revenue. He declared that one of the real advantages of the 5-cent fare would lie in the fact that a substantial increase in passengers could be handled without any increase in operating costs, certainly not in proportion to the increase in revenue. From the psychological point of view, in his opinion, the present is the most opportune time for installing such a system.

Florida

Fight City Rate Increase

THE board of aldermen of Tampa last March approved a 50 per cent increase in rates charged suburban consumers. The consumers have been seeking a permanent injunction to block the increase on the ground that the rates are excessive. Expert witnesses the first part of September testified before Circuit Judge Parks concerning the profits of the city water department.

Attorneys representing residents of subdivisions affected by the new rates called in auditors to support their position that there is no basis for the city's claim that the water plant is not paying an adequate return on the capital investment. They insist that the city in making such a claim bases it on the total investment at the time the plant was purchased and subsequent improvements rather than the city's equity. Furthermore, they contend that the water department management is retiring bonds and setting up a replacement fund by the straight-line rather than the sinking-fund method. The Tampa *Tribune* states:

"The 'straight-line' method, as explained by Manuel Montenegro, who audited the water department in 1928, consists of setting aside sufficient money each year to pay off bonds and build up replacement funds by dividing the aggregate investment by the number of years the equipment can be operated. As an illustration, Montenegro said the retirement of debt on a $50,000 plant figured to last fifty years would require annual 'straight-line' appropriation of $1,000. Under the sinking-fund plan, the annual appropriations would be reduced because money set aside by this method is invested at the current interest rate and consequently accumulates a surplus over a long period of years."

It was testified that the department's return on its plant equity in 1931 would have totaled 50.5 per cent if all rates had been increased 50 per cent, and calculated on the basis of the city's actual investment it would have been 14.4 per cent. One of the auditors said that it cost the department 60 cents to produce and deliver a dollar's worth of water for the fiscal year ending May 31, 1929. This cost, he said, has steadily decreased from year to year to the 55 cents shown in the 1931 operating analysis.

Illinois

New Gas Rates Are Claimed to Be Higher

GAS consumers in Quincy, according to the Quincy *Herald-Whig-Journal,* were led to believe that they would receive a 10 per cent reduction in rates when natural gas was introduced into the local system, but they say that gas bills seem to be 10 per cent higher instead. This opinion was brought out at a meeting of the council at which a motion was passed ordering representatives of the city to represent it at the commission hearing and to demand lower rates and the figuring of bills upon a cubic-foot basis rather than the therm basis.

The mayor recalled that the city had fought the therm system all the way through early stages of the gas fight and had asked consumers to protest therm basis bills. Yet out of the 9,000 Quincy consumers only 250 had protested the bills. One of the aldermen said that the local office of the utility company had handled complaints most courteously on occasions when he had gone with complaining consumers but "many consumers would not complain."

Indiana

Utility Counters with Higher Rate Demand

THE Public Service Company of Indiana in answers and a cross-petition in the Columbus rate case insists that instead of gas rates being too high they are too low. The company asks the commission to make an examination of its property and accounts with a view to establishing new rate schedules for gas "that will not be confiscatory."

The company claims a rate value of $437,000 for the Columbus gas utility, and sets forth in its cross-petition, that the gas revenues for the twelve months ending June 30th were approximately $71,400, while its cost of service was approximately $55,200, exclusive of fixed charges on capital investment. The net return was said to be about

$16,200, which was less than 3.75 per cent on its valuation.

Similar answers and cross-petitions were filed in rate cases involving Noblesville, French Lick, West Baden, and Wabash. Compromises were later effected for French Lick, West Baden, and Jonesville. Commissioner Harry K. Cuthbertson approved emergency reduction rates for these cities amounting to 20 per cent. French Lick also received a reduction in street lighting rates amounting to $657 a year.

Kentucky

Refusal of Toll Connection Is Involved in Damage Suit

JUDGE A. M. J. Cochran, in the Federal District Court for the eastern district of Kentucky, says the *United States Daily*, has sustained objections by the Southern Bell Telephone Company and the Cincinnati & Suburban Telephone Company to a petition filed by the Northern Kentucky Telephone Company, which claimed damages of $1,500,000 for alleged failure on the part of the first two companies to give it long-distance connections while granting them to the Bracken County Telephone Company, a competitor.

It was held by Judge Cochran that petitioner could not seek damages for a period of more than one year prior to the filing of the suit. He added that he doubted whether any valid claim of damages existed at all.

City Contracts for Current Invalid without Bid

AN injunction has been granted by Circuit Judge Charles H. Wilson on petition of the Kentucky Utilities Company against the city of Madisonville and the Kentucky Electric Power Corporation, enjoining the defendants from carrying out the provisions of a 5-year contract for electric energy to be furnished to the city, according to a report in the *United States Daily*.

The city had been receiving power from the Kentucky Utilities Company but recently made a new contract with the Kentucky Electric Power Corporation, which was to have been effective September 1st. Judge Wilson held that the new contract violated a section of the Kentucky statutes in that the proposed expenditure exceeds $500, that no ordinance was passed by the city council for such expenditure, and that there was no advertisement and award by contract to the lowest responsible bidder.

Short Gas Franchise Urged

THE Taxpayers' League of Louisville is campaigning against a franchise of more than five years for the Louisville Gas & Electric Company. The assertion is made that if the company fails to "play fair" during a 5-year franchise, steps can be taken for the city to acquire the plant and pay for it with profits from its operation. Officers of the league have urged residents to lobby with the board of aldermen against a long franchise.

The league also favors a rate of 4 cents a kilowatt hour. They point out that current is produced at the hydro plant at $\frac{1}{10}$ of a cent a kilowatt hour, and current is produced by the Kentucky Coke Company for $\frac{1}{2}$ cent. The margin between those costs and the 8-cent rate enabled the company to make more than $6,000,000 in 1931, according to a statement by one of the officers.

Abolition of minimum rates for gas and electricity and no increase in the price of gas and mixed gas for the three months in the winter are other demands made by the league.

Missouri

Court Refuses to Oust Public Utility Company

THE Missouri Supreme Court has denied a petition of the city of Sikeston to oust the Missouri Utilities Company, which has continued to operate in the city since the expiration of its 20-year franchise in 1922. The city in July, 1931, after construction of a municipal electric plant, ordered the company to discontinue the service of electricity within the city. Quoting from the *United States Daily:*

"It was contended by the city, in *quo warranto* proceedings filed in the name of the

attorney general, that no public necessity exists for continuation of the company's service. In an opinion by Chief Justice Frank E. Atwood, the supreme court held that this 'is a matter peculiarly within the jurisdiction of the public service commission.'

"The company contended that since November, 1925, it has operated in Sikeston by virtue of authority of a certificate of convenience and necessity issued by the state commission. It was further claimed that operations were conducted from 1922 to July, 1931, 'without any objection whatever, by the city, and that the city levied and collected taxes during this period.'

"The court held that it is 'clearly in accord with right and justice to hold, as we do, that in the circumstances the doctrines of laches and stoppage apply.'

"The city of Sikeston in 1931 voted a bond issue of $150,000 for a municipal plant. It was contended before the supreme court that competition wth this plant by the company might make it necessary to levy a direct tax upon all taxable property to pay off the bond issue."

New Jersey

Rate Probes through Pressure on Governor and Legislature

A BILL will probably be introduced in the next session of the legislature to provide for an investigation into the power system, according to officials of civic organizations protesting against electric light and gas rates in Camden, Gloucester, and Bergen counties. An assemblyman of one of these counties, reports the Newark *Call*, has agreed to sponsor the bill.

Twenty Camden county organizations have joined in the rate-protest movement, which was initiated by the North Camden Civic Association. It is said that petitions asking Governor Moore to sponsor a survey of the rates by the public utility commission will soon be presented. The petition states that the signers are furnished light and power by the Public Service Electric and Gas Company, and while the cost of labor and of materials used in producing light and gas had been materially reduced, there had been an actual increase in the price to consumers. The petition declares that the state commission has power of its own initiative to investigate and order commensurate reduction, but that such action had not been taken.

Referendum on Municipal Ownership Denied

THE Atlantic City commission on August 29th declined to authorize a referendum for municipal ownership of the local gas and electric plants. The commission denied the validity, legality, or effectiveness of petitions urging a popular vote on the question. It was also pointed out that the city was not in a position to finance the acquisition of the two utilities, either out of the current funds or by issuance of bonds. Any affirmative action, it was explained, would be a mere gesture and nullity, since the funds necessary for the purchase would place the bonded indebtedness of the city beyond its legal limits for practical purposes.

New York

Protest Made Against Rates and Service Refusal to Needy

BOROUGH President Harvey of borough of Queens has written to the public service commission asking for an investigation of electric light and power companies on the grounds that the companies are charging too high rates and are imposing a hardship on the unemployed by arbitrarily shutting off current for nonpayment of bills. Mr. Harvey said that although prices for other commodities had been reduced, nothing had been done by the power companies to meet present conditions.

He declared that more than 700 families in Queens had their electric power shut off each week because of inability to meet bills. He termed this a serious condition affecting the health, convenience, and general welfare of a large part of the population of the borough. He said that although it is in the entire rights of the power company to refuse to extend credit to the consumers, "it seems to me that during these times of unemployment and general financial distress that this is a rather arbitrary and inhumane way of doing business."

Consumers in the borough of Queens pay 10 cents per kilowatt hour for the first 10 kilowatt hours, 6 cents for the next 5 kilo-

watt hours, and 5 cents per hour for all over that. In addition, there is a minimum charge of $1. Mr. Harvey said that this charge in itself is a hardship to "the hundreds of families without income as a result of unemployment." He said that it is conceded "by the most reliable of independent authorities on the subject" that 5 cents per kilowatt hour should be the maximum rate for electricity, while in the majority of cases the maximum revenue of 4 cents per hour would bring the companies a revenue greater than is legally permissible.

Multiple Tenant Charges Arouse Storm of Protest

COMMISSIONER Lunn has been holding hearings relating to the charges by the Green Island Water Company, against which, according to the Troy *Times*, a highly antagonistic attitude toward the practices of the company was evidenced by residents of Green Island. The water company contends that the rates under which it has rendered bills since February 1st of this year are the rates which have always been in effect and were filed with the public service commission in July, 1931, when that body took over the jurisdiction of all water companies. These rates, it is said, had not been previously enforced because of the laxity of company managers.

The residents assert that for thirty-two years the water company has charged a minimum rate per house but that with the rendering of the February bills, without any notice the rate was changed to apply to each tenant instead of to the house. Where there are two families being served by the same meter, the minimum charge of $3.60 has been doubled to $7.20, or in the case of three families, $10.80 per quarter. Quoting from the *Times:*

"Commissioner Lunn stated that all small water companies in the state, with the exception of half a dozen, had abandoned the practice of charging per tenant and had substituted the house rate. The idea of the multiple tenant rate, that is, multiplying the minimum charge by the number of tenants served on one meter, was pointed out several times as 'a bad practice' by Commissioner Lunn."

There was also a discussion of the adequacy of the water company's rates. Counsel for the company contended that the fixed capital was $163,378.82. The financial report for the year 1931 shows its earnings to be approximately $6,000. The company contends that it is entitled to nearly twice that amount in order to earn a 7 per cent return.

Oregon

Commissioner Orders Investigation of Utility Group

AN investigation of the financial and managerial affairs of the Pacific Northwest Public Service Company, Portland General Electric Company, and Portland Traction Company, including stock and bond transactions between these utilities and the Central Public Service Corporation and Central Public Service Company has been ordered by Public Utilities Commissioner Charles M. Thomas. The *United States Daily* says:

"Specific matters subject to investigation under the order include franchises, capitalization, corporate affiliations, general dealings, stock and bond transactions, past and present indebtedness, loans and transfers of corporate funds, and other items involving the financial structure of the several companies and corporations involved."

Rhode Island

Power Tax on Minimum Bills and Service Charges

THE practice of utility companies in imposing the 3 per cent Federal power tax on bills which include service charges for unusual electric energy, according to the Pawtucket *Times*, has been protested by Congressman Francis B. Condon in a letter sent to Secretary of the Treasury Ogden L. Mills. He charged that the companies are making consumers pay the tax on the $1 minimum service charge whether or not $1 worth of electrical energy is used during the month. He declared that it was the intention of Congress to assess the levy only upon the actual energy consumed and not upon bills which included a service charge for electricity.

The Latest Utility Rulings

Unprofitable Utility May Not Cease Service until It Has Sought Rate Increase

THE failure of a public utility to seek adequate rates to enable it to keep its plant and distribution system in such condition as to permit it to render adequate service at rates the consumers can afford to pay is no justification for the granting of permission to the utility to discontinue service, according to an order of the California commission denying an application of the Maclay Rancho Water Company, seeking permission to cease operation.

The commission pointed out the present consumers are in no position to obtain an alternative source of supply except at a prohibitive cost, and it was through no fault of theirs that the lax and inefficient management of the waterworks had resulted in severely handicapping the maintenance of economic service. The commission was of the opinion that reasonably efficient operating methods and practices might have put the utility in a position to set aside the proper depreciation reserve for the replacement of production and distribution facilities and make unnecessary the unreasonably excessive amounts being paid out to replace the worn-out system. The commission stated:

"At no time has this company appealed to the commission for such a readjustment of rates as would provide for the continuation of service upon a reasonable basis and without its suffering an out-of-pocket loss. There is nothing in the record of this case which would indicate that it is not entirely feasible as well as proper for this utility to so rearrange its water production and distribution facilities and to so reorganize its operating methods and practices so that it can deliver water at a fair cost and at a price which the consumers can afford to pay.

"Measures should be adopted without delay by this utility to place its waterworks upon a proper and efficient operating basis and, should it thereupon be necessary, applicant has the right, and perhaps, under the circumstances peculiar to this case, the duty of applying to this commission for such readjustment of its rates as may be just and proper under the premises.

"As the present consumers have no other source of water supply available to them at a price they can now afford to pay and as the utility has made no sincere and earnest efforts either to economize in operating its system or to install the necessary improvements, it is apparent that the request to discontinue service is neither warranted nor justified by the testimony and evidence submitted in this proceeding and is inimical to the legal rights and best interests of the public. The request, therefore, will be denied."

Re Maclay Rancho Water Co. (Cal.).

Gas and Electric Utility Held Obliged to Serve Rural Consumers

THE New York State Gas and Electric Corporation has been directed by the public service commission to furnish electric service on rural lines after January 1, 1932, to about 300 farmers in sixteen counties who have applied for such service, and who have complied with the requirements of the company's filed schedules. The commission declared that a "definite obligation" rests upon a public utility when filing its schedules, and the order also directs the company to provide, upon the written request of any prospective customer, proper forms for application for rural service.

The utility was directed to notify the commission before October 1, 1932, whether it would accept and carry out the terms of the order and supply to the commission a plan in writing which would outline the order for furnishing

the service to various persons who had applied for it.

The commission's order came as a result of fifty complaints which had been filed with the commission, and which in turn had resulted in an investigation to determine why prospective customers were unable to get service. The company has a definite plan for rural extensions known as the Adirondack plan. Groups of prospective customers in different localities had sought to have electric lines extended under this plan, but were told that the company had no available funds to make the extension at that time. The commission found there was no evidence that the company lacked the necessary funds. More recently the company had filed a substitute schedule covering line extensions under which connections would be made provided a customer or customers advanced funds of $1,600 per mile to the company. Refunds of this advance together with 6 per cent interest would be paid in an amount equivalent to 50 per cent of the total revenue received from customers on each separate extension during each year until the entire amount had been repaid. The commission suspended the $1,600 a mile provision in view of the fact that the evidence showed that the farmers generally were in no position to finance rural lines. The commission pointed out that the farmers needed all their cash and credit. *Re New York State Gas & Electric Corp.*

Are Telephone Monopolies Subject to the Sherman Antitrust Law?

THE Sherman Antitrust Law prohibits unlawful monopoly and unreasonable trade restraint in interstate commerce. It also gives to the victim of any conspiracy for such unreasonable restraint of trade in interstate commerce the right to sue and obtain treble damages for the injury sustained by reason of such conspiracy as against the conspirators.

The Northern Kentucky Telephone Company, a Delaware corporation, is engaged in telephone service in Bracken county, Kentucky, and in Robertson county, Kentucky. It has about 550 subscribers in the former county and about 200 in the latter. More recently it desired to expand its service and to obtain long-distance connections. It applied to companies in the surrounding territory to afford physical connection with their lines. The Bracken County Telephone Company, the Kentucky State Telephone Company, and others, however, refused to agree to an interchange of messages with the Northern Kentucky Telephone subscribers and the latter brought an action in Federal court alleging that the neighboring telephone companies were engaged in unlawful conspiracy to effect an unreasonable restraint of trade in interstate commerce within the meaning of the Sherman Antitrust Law. The action asked for treble damages.

The court held that the conspiracy, assuming that there was a conspiracy, seemed to be directed against one who was not engaged in interstate commerce but who desired to become so. In other words, the object of the alleged conspiracy was not to injure one who was already engaged in interstate commerce, but to keep one not so engaged out of it. The question was, therefore, raised whether the latter type of conspiracy was covered by the Sherman Antitrust Law. The court observed that such a conspiracy does not diminish the plaintiff's interstate business or the value of the property used in such business because the plaintiff has no such business and owns no such property. The only business which can be affected is not interstate commerce and the only property which can be affected is not used in such interstate commerce.

The court held, therefore, that the defendants did nothing to restrain the plaintiff from engaging in the interstate telephone business, and that all that could be said was that they refused to help the plaintiff to get into the interstate telephone business. The court stated that when one refuses to help another it could not be said that he thereby restrains him.

The court also observed that the telephone business is a natural monopoly and that if the plaintiff's desire could be effected, the highways of Bracken county would be subject to two lines and the citizens of the county in order to get good service all over the county would have to patronize two companies. The court questioned whether, in a case where a new company was preparing to enter a local field, it is a violation of the Sherman Antitrust Act for a long-distance company to take sides with the existing local company and to refuse to furnish the newcomer with a long-distance service. If this is a restraint at all, the court intimated, it is a reasonable restraint. The suit was dismissed. *Northern Kentucky Telephone Co. v. Southern Bell Telephone Co.*

A Distinction between the Convenience Tests for Private and Common Carriers

ONE of the most interesting decisions, from a purely legal viewpoint, that has been handed down in recent weeks, was an order of the Florida Supreme Court reversing a decision of a lower court of that state which held unconstitutional certain sections of the Florida Motor Carrier Law, which sought to impose a test of convenience and necessity upon private motor carriers. It appeared that Mr. D. B. Lawson, a private carrier within the meaning of the Florida statute, attempted to engage in such transportation over the highways of the state without first obtaining a certificate from the said commission as also required by the Florida statute. A taxpayer, one R. R. Riley, sought by means of an injunction to restrain Mr. Lawson from operation. Lawson defended on the ground that any requirement of a certificate which would impose a test of convenience and necessity upon a private motor carrier was unconstitutional. A lower court sustained Lawson's position and dismissed the suit.

The supreme court, however, held that the showing required to be made by a private contract carrier operating in continuous or recurring carriage under the same contract, in order to demonstrate public convenience and necessity for the operation of such private contract carrier, does not rest upon the same considerations that are required to be shown in order to demonstrate public convenience and necessity for the operation of common carriers. The court held that a proper construction of the portions of the Florida law in question would be that the commission would be required, in considering applications for certificates by private contract carriers, to determine as a conditional prerequisite to the granting of such certificates, whether or not the public convenience and necessity of maintaining and protecting existing transportation systems in the state and of fostering a fair distribution of traffic on the highways with a view to maintaining necessary facilities and not inconveniencing the public by inordinate uses of highways for purposes of gain, would be imposed upon and impaired.

The court held that the state has a right to foster a fair distribution of traffic between private contract carriers and common carriers who operate under similar conditions and make a similar use of the available highways. The court also held that the state has the right to secure the continued utilization of railroad systems which serve the people, since such state and national policy

requires that railway systems be adequately maintained and kept available for public service. To this end, the court observed, the state might protect the highways from excessive burdens of unnecessary or nonessential motor vehicle haulage as a matter of protecting the interests of all the people, or as a matter of protecting the interests of the greatest number. It was said that the test of the validity of regulations which are imposed upon private carriers is whether or not the regulations imposed are appropriate for the kind of carrier involved. It is to be noted that the suit for injunction to restrain the operation in this case was brought by a private taxpayer which is apparently permissible under the Florida statutes. *Riley v. Lawson.*

Order Leveling Motor Freight Rates with Rail Rates Rescinded

THE Oklahoma Corporation Commission has revoked a former order which fixed motor transportation freight rates at the same level as railroad rates between Oklahoma City and Tulsa and has authorized Class A freight lines operating between the two cities to initiate rates subject to suspension by the commission in case an investigation would be required. The revocation of the former order came as a result of a complaint by Class A freight carriers and a rehearing was had on the specific complaint of the Yellow Transit Company. The motor freight carriers pointed out that the steam carriers had readjusted rates since the 1930 order (which required the Class A freight carriers to observe railroad rates, rules, and regulations as minimums) and had established free pickup and delivery service with allowances to shippers and other services. The motor freight carriers declared that the commission order was inflexible, as it was based on fixed rates charged at a specified time, and that such rates and conditions had since changed.

It was pointed out in the commission order that the evidence brought out at the recent hearing indicated that motor truck carriers operating between highly competitive points should be closely regulated to prevent rate wars, or rate changes which but temporarily reflect a revenue balance to the line making such rates. It was observed that motor transportation operators should be permitted to give to the shipping public the advantages of economic transportation, but transportation from the rate standpoint should never be left as a matter of barter between shippers and a single carrier. The new commission order permits the motor freight lines to initiate rates, rules, and regulations, but specifies that they shall not become effective until an opportunity is afforded to all interested parties to study such proposed changes and, if desired, obtain a ruling from the commission thereon. *Re Class A Motor Carrier Rates.*

Other Important Rulings

SERVICE of a "cease and desist" order of the railroad commission upon the person against whom it is directed is not absolutely necessary in order to give the commission its constitutional authority to punish for contempt, according to a recent decision of the California District Court of Appeals. It was observed that the "cease and desist" order in question became effective upon a certain date and was not by its own terms required to be served upon the person to whom it was directed. Although it was not shown that the order had been personally served upon such person, it did appear that the person did have actual knowledge of the existence of the order and of the fact that it had